

CUSTOMS COURTS ACT OF 1980

AUGUST 20, 1980.—Ordered to be printed

Mr. RODINO, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 7540]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 7540) to improve the Federal judicial machinery by clarifying and revising certain provisions of title 28, United States Code, relating to the judiciary and judicial review of international trade matters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

COMPOSITION OF COURT

SEC. 101. Section 251 of title 28, United States Code, is amended to read as follows:

“§ 251. Appointment and number of judges; offices

“(a) The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. The court is a court established under article III of the Constitution of the United States.

“(b) The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as chief judge. The chief judge

shall continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.

"(c) The offices of the Court of International Trade shall be located in New York, New York."

ASSIGNMENT OF JUDGES

SEC. 102. (a) Section 293(b) of title 28, United States Code, is amended by striking out "Customs Court" and all that follows through "need arises" and inserting in lieu thereof "Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises".

(b) Section 293(d) of title 28, United States Code, is amended to read as follows:

"(d) The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Appeals for International Trade, Patents, and Trademarks or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Appeals for International Trade, Patents, and Trademarks or the Court of Claims."

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

JURISDICTION OF THE COURT

SEC. 201. Chapter 95 of title 28, United States Code, is amended to read as follows:

"CHAPTER 95—COURT OF INTERNATIONAL TRADE

"Sec.

"1581. Civil actions against the United States and agencies and officers thereof.

"1582. Civil actions commenced by the United States.

"1583. Counterclaims, cross-claims, and third-party actions.

"1584. Cure of defects.

"1585. Powers in law and equity.

"§ 1581. Civil actions against the United States and agencies and officers thereof

"(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

"(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

"(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.

"(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974 and any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act.

"(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

"(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

"(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

"(1) any decision of the Secretary of the Treasury to deny or revoke a custom-house broker's license under section 641(a) of the Tariff Act of 1930; and

"(2) any order of the Secretary of the Treasury to revoke or suspend a custom-house broker's license under section 641(b) of the Tariff Act of 1930.

"(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted mer-

chandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

"(1) revenue from imports or tonnage;

"(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

"(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

"(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

"§ 1582. Civil actions commenced by the United States

"The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

"(1) to recover a civil penalty under section 592, 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

"(2) to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or

"(3) to recover customs duties.

"§ 1583. Counterclaims, cross-claims, and third-party actions

"In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

"§ 1584. Cure of defects

"(a) If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.

"(b) If a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Appeals for International Trade, Patents, and Trademarks is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals or to the Court of Appeals for International Trade, Patents, and Trademarks, where such action shall proceed as if it had been commenced in such court in the first instance.

"§ 1585. Powers in law and equity

"The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States."

TITLE III—COURT OF INTERNATIONAL TRADE PROCEDURE

COURT PROCEDURE

SEC. 301. Chapter 169 of title 28, United States Code, is amended to read as follows:

"CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

"Sec.

"2631. Persons entitled to commence a civil action.

"2632. Commencement of a civil action.

"2633. Procedure and fees.

"2634. Notice.

"2635. Filing of official documents.

"2636. Time for commencement of action.

"2637. Exhaustion of administrative remedies.

"2638. New grounds in support of a civil action.

"2639. Burden of proof; evidence of value.

- "2640. Scope and standard of review.
- "2641. Witnesses; inspection of documents.
- "2642. Analysis of imported merchandise.
- "2643. Relief.
- "2644. Interest.
- "2645. Decisions.
- "2646. Retrial or rehearing.
- "2647. Precedence of cases.

"§ 2631. Persons entitled to commence a civil action

"(a) A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on the transaction which is the subject of the protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.

"(c) A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.

"(d) A civil action to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974, or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act, may be commenced by a worker, group of workers, certified or recognized union, authorized representative of such worker or group, firm or its representative, or community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.

"(e) A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.

"(f) A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.

"(g)(1) A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.

"(2) A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.

"(h) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.

"(i) Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)–(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.

"(j)(1) Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade may, by leave of court, intervene in such action, except that—

"(A) no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;

"(B) in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and

"(C) in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.

"(2) In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

"(k) In this section—

"(1) 'interested party' has the meaning given such term in section 771(9) of the Tariff Act of 1930; and

"(2) 'party-at-interest' means—

"(A) a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;

"(B) a manufacturer, producer, or wholesaler in the United States of a like product;

"(C) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and

"(D) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

"§ 2632. Commencement of a civil action

"(a) Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.

"(b) A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.

"(c) A civil action in the Court of International Trade under section 516A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.

"(d) The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.

"§ 2633. Procedure and fees

"(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

"(b) The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

"(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

"§ 2634. Notice

"Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

"§ 2635. Filing of official documents

"(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

"(A) the consumption or other entry and the entry summary;

"(B) the commercial invoice;

"(C) the special customs invoice;

"(D) a copy of the protest or petition;

"(E) a copy of the denial, in whole or in part, of the protest or petition;

"(F) the importer's exhibits;

"(G) the official and other representative samples;

"(H) any official laboratory reports; and

"(I) a copy of any bond relating to the entry.

"(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

"(b)(1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

"(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930; and

"(B)(i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

"(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, comment, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material in camera and may make such material available under such terms and conditions as the court may order.

"(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.

"(d)(1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

"(A) a copy of the contested determination and the findings or report upon which such determination was based;

"(B) a copy of any reported hearings or conferences conducted by the agency; and

"(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

"(2) The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.

"(3) The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.

"§ 2636. Time for commencement of action

"(a) A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—

"(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

"(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.

"(c) A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(d)(1) A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(2) A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.

"(e) A civil action contesting a final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974, or a final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of notice of such determination.

"(f) A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.

"(g) A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.

"(h) A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.

"(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.

"§ 2637. Exhaustion of administrative remedies

"(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

"(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced only by a person who has first exhausted the procedures set forth in such section.

"(c) A civil action described in section 1581(h) of this title may be commenced prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

"(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

"§ 2638. New grounds in support of a civil action

"In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—

"(1) applies to the same merchandise that was the subject of the protest; and

"(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

"§ 2639. Burden of proof; evidence of value

"(a)(1) Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.

"(2) The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.

"(b) In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.

"(c) Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—

"(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

"(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

"§ 2640. Scope and standard of review

"(a) The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:

"(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

"(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

"(3) Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

"(4) Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.

"(5) Civil actions commenced to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930.

"(6) Civil actions commenced under section 1582 of this title.

"(b) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.

"(c) In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for assistance under the Trade Act of 1974, or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act, the court shall review the matter as specified in section 284 of such Act.

"(d) In any civil action not specified in this section, the court shall review the matter as provided in section 706 of title 5.

"§ 2641. Witnesses; inspection of documents

"(a) Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.

"(b) The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.

"§ 2642. Analysis of imported merchandise

"The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

"§ 2643. Relief

"(a) In any civil action commenced under section 1581 or 1582 of this title or in any counterclaim, cross-claim, or third-party action under section 1583 of this title, the Court of International Trade may enter a money judgment for or against the United States.

"(b) If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.

"(c)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.

"(2) The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974, or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act.

"(3) In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.

"(4) In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.

"(d) If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.

"§ 2644. Interest

"If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

"§ 2645. Decisions

"(a) A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—

"(1) a statement of findings of fact and conclusions of law; or

"(2) an opinion stating the reasons and facts upon which the decision is based.

"(b) After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment.

"(c) A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Appeals for International Trade, Patents, or Trademarks within the time and in the manner provided in section 2601 of this title.

"§ 2646. Retrial or rehearing

"After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

"§ 2647. Precedence of cases

"The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B) (i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section."

JURY TRIALS

SEC. 302. (a) Chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1876. Trial by jury in the Court of International Trade

"(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

"(b) Whenever the Court of International Trade conducts a jury trial—

"(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

"(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

"(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

"(4) jurors shall be compensated in accordance with section 1871 of this title."

(b) The section analysis for chapter 121 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1876. Trial by jury in the Court of International Trade."

(c) Section 1862 of title 28, United States Code, is amended by inserting "or in the Court of International Trade" immediately after "United States".

TITLE IV—COURT OF APPEALS FOR INTERNATIONAL TRADE, PATENTS, AND TRADEMARKS

JURISDICTION OF THE COURT

SEC. 401. (a)(1) Section 1541(a) of title 28, United States Code, is amended to read as follows:

"(a) The Court of Appeals for International Trade, Patents, and Trademarks shall have exclusive jurisdiction of appeals from all final decisions of the Court of International Trade."

(2) Section 1541 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The Court of Appeals for International Trade, Patents, and Trademarks shall have exclusive jurisdiction of appeals from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions."

(b)(1) Section 1543 of title 28, United States Code, is amended to read as follows:

"§ 1543. International Trade Commission determinations

"The Court of Appeals for International Trade, Patents, and Trademarks shall have jurisdiction to review the final determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade."

(2) The item relating to section 1543 in the section analysis of chapter 93 of title 28, United States Code, is amended to read as follows:

"1543. International Trade Commission determinations."

POWERS OF THE COURT

SEC. 402. (a) Chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new section:

"§ 1546. Powers in law and equity

"The Court of Appeals for International Trade, Patents, and Trademarks shall have all the powers in law and equity of, or as conferred by statute upon, a court of appeals of the United States."

(b) The section analysis of chapter 93 of title 28, United States Code, as amended by section 401 of this Act, is further amended by adding at the end thereof the following new item:

"1546. Powers in law and equity."

COURT OF APPEALS FOR INTERNATIONAL TRADE, PATENTS, AND TRADEMARKS PROCEDURE

SEC. 403. (a) Section 2601(a) of title 28, United States Code, is amended by adding at the end thereof the following new sentence: "If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed."

(b) The first sentence of section 2601(b) of title 28, United States Code, is amended—

(1) by inserting "or cross appeal" immediately after "appeal" each place it appears; and

(2) by striking out "which shall include a concise statement of the errors complained of".

(c) The third sentence of section 2601(b) of title 28, United States Code, is amended by striking out "and the Secretary of the Treasury or their designees" and inserting in lieu thereof "and any named official".

(d) Section 2601(c) of title 28, United States Code, is amended by inserting immediately after the first sentence the following new sentences: "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether the findings of fact are clearly erroneous, whether or not the party raising such question made an objection to such findings in the Court of International Trade or made a motion to amend such findings."

(e)(1) Section 2602 of title 28, United States Code, is amended to read as follows:

"§ 2602. Precedence of cases

"The following civil actions in the Court of Appeals for International Trade, Patents, and Trademarks shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

"(1) First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.

"(2) Second, a civil action for the review of a determination under section 516A(a)(1)(B) (i) or (ii) of the Tariff Act of 1930.

"(3) Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.

"(4) Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.

"(5) Fifth, an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202)."

(2) The item relating to section 2602 in the section analysis of chapter 167 of title 28, United States Code, is amended to read as follows:

"2602. Precedence of cases."

RULES OF EVIDENCE

SEC. 404. (a) Chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 2603. Rules of evidence

"Except as provided in section 2639 or 2641(b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence shall apply in the Court of Appeals for International Trade, Patents, and Trademarks in any appeal from the Court of International Trade."

(b) The section analysis of chapter 167 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"2603. Rules of evidence."

JUDICIAL CONFERENCE

SEC. 405. (a) Chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new section:

"§ 2604. Judicial conference

"The chief judge of the Court of Appeals for International Trade, Patents, and Trademarks is authorized to summon annually the judges of such court to a judicial

conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.”

(b) The section analysis of chapter 167 of title 28, United States Code, as amended by section 404 of this Act, is further amended by adding at the end thereof the following new item:

“2604. Judicial conference.”.

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

SEC. 501. The following provisions of title 28, United States Code, are amended by striking out “Customs Court” and inserting in lieu thereof “Court of International Trade”:

- (1) The item relating to chapter 11 in the chapter analysis of part I.
- (2) The chapter heading of chapter 11.
- (3) Section 253(a).
- (4) Section 254.
- (5) Section 255(a).
- (6) Section 257.
- (7) Section 292(e).
- (8) Section 293(c).
- (9) Section 372 (a) and (b).
- (10) Section 451 (including that section as it will become effective on April 1, 1984).
- (11) Section 456.
- (12) Section 569(a) (including that section as it will become effective on April 1, 1984).
- (13) The item relating to chapter 55 in the chapter analysis of part III.
- (14) Section 605.
- (15) Section 610.
- (16) The chapter heading of chapter 55.
- (17) Section 871.
- (18) Section 872.
- (19) Section 873.
- (20) The item relating to chapter 95 in the chapter analysis of part IV.
- (21) Section 1340.
- (22) The item relating to section 1541 in the section analysis of chapter 93.
- (23) The section heading for section 1541.
- (24) Section 1541(b).
- (25) The item relating to chapter 169 in the chapter analysis of part VI.
- (26) The item relating to section 2601 in the section analysis of chapter 167.
- (27) The section heading for section 2601.
- (28) Section 2601 (a), (b), and (c).

SEC. 502. The following provisions of title 28, United States Code, are amended by striking out “Court of Customs and Patent Appeals” and inserting in lieu thereof “Court of Appeals for International Trade, Patents, and Trademarks”:

- (1) The item relating to chapter 9 in the chapter analysis of part I.
- (2) The chapter heading of chapter 9.
- (3) Section 211.
- (4) Section 212.
- (5) Section 213.
- (6) Section 214.
- (7) Section 215.
- (8) Section 216.
- (9) Section 256(b).
- (10) Section 291(b).
- (11) Section 292(e).
- (12) Section 293 (a) and (c).
- (13) Section 331 (including that section as it will become effective on April 1, 1984).
- (14) Section 372 (a) and (b).
- (15) Section 451 (including that section as it will become effective on April 1, 1984).
- (16) Section 456 (including that section as it will become effective on April 1, 1984).
- (17) The item relating to chapter 53 in the chapter analysis of part III.
- (18) Section 610.

- (19) The chapter heading of chapter 53.
- (20) Section 831.
- (21) Section 832.
- (22) Section 833(a).
- (23) Section 834.
- (24) Section 957(b).
- (25) The item relating to chapter 93 in the chapter analysis of part IV.
- (26) The item relating to section 1256 in the section analysis of chapter 81.
- (27) The section heading for section 1256.
- (28) Section 1256.
- (29) The chapter heading of chapter 93.
- (30) Section 1541(b).
- (31) Section 1542.
- (32) Section 1544.
- (33) Section 1545.
- (34) The item relating to section 1926 in the section analysis of chapter 123.
- (35) The section heading for section 1926.
- (36) Section 1926.
- (37) The item relating to chapter 167 in the chapter analysis of part VI.
- (38) The chapter heading of chapter 167.
- (39) Section 2601 (a), (b), and (c).

SEC. 503. Section 252 of title 28, United States Code, is amended by striking out "Judge of the Customs Court" and inserting in lieu thereof "Judges of the Court of International Trade".

SEC. 504. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 505. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court."

SEC. 506. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title."

SEC. 507. Section 1352 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 508. Section 1355 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 509. Section 1356 of title 28, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", except matters within the jurisdiction of the Court of International Trade under section 1582 of this title".

SEC. 510. The second paragraph of section 1491 of title 28, United States Code, is amended by striking out "in suits" and inserting in lieu thereof "of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action".

SEC. 511. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" the first place it appears.

SEC. 512. (a) Chapter 125 of title 28, United States Code, is amended by inserting immediately after section 1963 the following new section:

"§ 1963A. Registration of judgments of the Court of International Trade

"(a) A judgment in any civil action for the recovery of money or property entered by the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any judicial district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

"(b) A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien."

(b) The section analysis of chapter 125 of title 28, United States Code, is amended by inserting immediately after the item relating to section 1963 the following new item:

"1963A. Registration of judgments of the Court of International Trade."

SEC. 513. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or the Court of International Trade" immediately after "court" in the first sentence.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

SEC. 601. The following provisions of law are amended by striking out "Customs Court" and inserting in lieu thereof "Court of International Trade":

- (1) Section 6001 of title 18, United States Code.
- (2) Section 305 of the Tariff Act of 1930 (19 U.S.C. 1305).
- (3) Section 502(b) of the Tariff Act of 1930 (19 U.S.C. 1502(b)).
- (4) Section 503 of the Tariff Act of 1930 (19 U.S.C. 1503).
- (5) Section 514 (a) and (b) of the Tariff Act of 1930 (19 U.S.C. 1514(a) and (b)).
- (6) Section 516 (d), (e), and (f) of the Tariff Act of 1930 (19 U.S.C. 1516 (d), (e), and (f)).
- (7) Section 516A (a)(2), (c), (d), and (e) of the Tariff Act of 1930 (19 U.S.C. 1516a (a)(2), (c), (d), and (e)).
- (8) Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528).
- (9) Section 308(9) of the Ethics in Government Act (28 U.S.C. app.).
- (10) Section 7443(d) of the Internal Revenue Code of 1954.
- (11) Section 906 of title 44, United States Code.

SEC. 602. The following provisions of law are amended by striking out "Court of Customs and Patents Appeals" and inserting in lieu thereof "Court of Appeals for International Trade, Patents, and Trademarks":

- (1) Section 71 of the Plant Variety Protection Act (7 U.S.C. 2461).
- (2) Section 21(a) and (b) of the Trademark Act of 1946 (15 U.S.C. 1071(a) and (b)).
- (3) Section 6001 of title 18, United States Code.
- (4) Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)).
- (5) Section 516 (d) and (f) of the Tariff Act of 1930 (19 U.S.C. 1516 (d) and (f)).
- (6) Section 516A (c) and (e) of the Tariff Act of 1930 (19 U.S.C. 1516a (c) and (e)).
- (7) Section 528 of the Tariff Act of 1930 (19 U.S.C. 1528).
- (8) Section 308(9) of the Ethics in Government Act (28 U.S.C. app.).
- (9) The item relating to section 141 in the section analysis of chapter 13 of title 35, United States Code.
- (10) Section 141 of title 35, United States Code.
- (11) Section 142 of title 35, United States Code.
- (12) Section 143 of title 35, United States Code.
- (13) Section 144 of title 35, United States Code.
- (14) Section 145 of title 35, United States Code.
- (15) Section 146 of title 35, United States Code.
- (16) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182).
- (17) Section 305(d) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457(d)).
- (18) Section 906 of title 44, United States Code.

SEC. 603. The first section of the Act entitled "An Act to provide the name by which the Board of General Appraisers and members thereof shall be known" approved May 28, 1926 (19 U.S.C. 405a), is repealed.

SEC. 604. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended—

- (1) by inserting "for review in accordance with chapter 7 of title 5, United States Code" immediately before the period at the end of the fourth sentence; and
- (2) by striking out the last sentence and inserting in lieu thereof the following new sentence: "Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code."

SEC. 605. (a) Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C. 1514(a)(4)) is amended to read as follows:

"(4) the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;"

(b) Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is further amended by striking out "section 2632 of title 28 of the United States Code within the time prescribed by section 2631" and inserting in lieu thereof "chapter 169 of title 28 of the United States Code within the time prescribed by section 2636".

SEC. 606. Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended by striking out "section 1582" and inserting in lieu thereof "section 1581".

SEC. 607. (a) Section 516(a) of the Tariff Act of 1930 is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by striking out "(as defined in section 771(9) (C), (D), and (E) of this Act)";

(3) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(4) by inserting at the end thereof the following new paragraph:

"(2) As used in this section, the term 'interested party' means a person who is—

"(A) a manufacturer, producer, or wholesaler in the United States;

"(B) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or

"(C) a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States, of goods of the same class or kind as the designated imported merchandise."

(b) Section 516(d) of the Tariff Act of 1930 (19 U.S.C. 1516(d)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

SEC. 608. (a) Section 516A(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1516A(a)(1)) is amended to read as follows:

"(1) REVIEW OF CERTAIN DETERMINATIONS.—

"(A) THIRTY-DAY REVIEW.—Within 30 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

"(ii) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or

"(iii) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

"(B) TEN-DAY REVIEW.—Within 10 days after the date of publication in the Federal Register of notice of—

"(i) a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated, or

"(ii) a negative determination by the administering authority under section 703(b) or 733(b) of this Act, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based."

(b) Section 516A(a)(3) of the Tariff Act of 1930 (19 U.S.C. 1516A(a)(3)) is amended by striking out "section 2632" and inserting in lieu thereof "chapter 169".

(c) Section 516A(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1516A(c)(2)) is amended by striking out the second sentence.

(d) The second sentence of section 516A(d) of the Tariff Act of 1930 (19 U.S.C. 1516A(d)) is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court."

SEC. 609. Section 592(e) of the Tariff Act of 1930 (19 U.S.C. 1592(e)) is amended by striking out "(e) DISTRICT COURT PROCEEDINGS.—" and all that follows through "under this section—" and inserting in lieu thereof the following:

"(e) COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—"

SEC. 610. Section 604 of the Tariff Act of 1930 (19 U.S.C. 1604) is amended—

(1) by striking out "every United States district attorney" and inserting in lieu thereof "the Attorney General of the United States";

(2) by inserting "or the Court of International Trade" immediately after "district court"; and

(3) by striking out "such district attorney" and inserting in lieu thereof "the Attorney General".

SEC. 611. (a) The second sentence of the second paragraph of section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out "in the circuit court" and all that follows through "District of Columbia" and inserting in lieu thereof "in the Court of International Trade".

(b) Section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) is amended by striking out the next to last sentence of the second paragraph.

SEC. 612. Section 250 of the Trade Act of 1974 (19 U.S.C. 2322), and the item relating to such section in the table of contents of such Act, are repealed.

SEC. 613. (a) Title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.) is amended by redesignating section 284 as section 285 and by inserting immediately after section 283 the following new section:

"SEC. 284. JUDICIAL REVIEW.

"(a) A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, a community aggrieved by a final determination of the Secretary of Commerce under section 271 of this title, or any other interested domestic party aggrieved by any such final determination may, within 60 days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.

"(b) The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(c) The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for International Trade, Patents, and Trademarks as prescribed by the rules of such court. The judgment of the Court of Appeals for International Trade, Patents, and Trademarks shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28."

(b) The table of contents of the Trade Act of 1974 (19 U.S.C. 2101 et seq.) is amended by striking out the item relating to section 284 and inserting in lieu thereof the following new items:

"Sec. 284. Judicial review.

"Sec. 285. Effective date."

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

EFFECTIVE DATES

SEC. 701. (a) Except as otherwise provided in this section, the amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply

with respect to civil actions pending on or commenced on or after such date of enactment.

(b)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the date of the enactment of this Act:

(A) Sections 1581(d), 1581(g), 1581(h), 1581(i), and 1583, as amended by section 201 of this Act.

(B) Sections 2631(d), 2631(g), 2631(h), 2631(i), 2631(j), 2632(a), 2635, 2636, 2637(c), 2639(b), 2640(a)(5), 2640(c), 2640(d), 2643(a), 2643(c)(2), 2643(c)(4), and 2644, as amended by section 301 of this Act.

(C) Section 1876, as added by section 302(a) of this Act.

(D) Sections 2601 and 2602, as amended by section 403 of this Act.

(E) Section 1919, as amended by section 511 of this Act.

(F) Section 1963A, as added by section 512(a) of this Act.

(2) Sections 337(c) and 641(b) of the Tariff Act of 1930, as amended by sections 604 and 611 of this Act, shall apply with respect to civil actions commenced on or after the date of the enactment of this Act.

(3) Section 284 of the Trade Act of 1974, as added by section 613 of this Act, shall apply with respect to civil actions commenced on or after the date of enactment of this Act.

(c)(1) The following sections of title 28, United States Code, shall apply with respect to civil actions commenced on or after the 90th day after the date of the enactment of this Act:

(A) Sections 1582, 2639(a)(2), and 2640(a)(6), as amended by sections 201 and 301 of this Act.

(B) Sections 1352, 1355, and 1356, as amended by sections 507, 508, and 509 of this Act.

(2) Section 592(e) of the Tariff Act of 1930, as amended by section 609 of this Act, shall apply with respect to civil actions commenced on or after 90th day after the date of the enactment of this Act.

(d) Section 2604 of title 28, United States Code, as added by section 405(a) of this Act, shall take effect on October 1, 1980.

TREATMENT OF REFERENCES

SEC. 702. Any reference in any statute or regulation of the United States to the United States Customs Court, the U.S. Customs Court, or the Customs Court shall be deemed to be a reference to the United States Court of International Trade, and any reference in any such statute or regulation to the United States Court of Customs and Patent Appeals, the U.S. Court of Customs and Patent Appeals, or the Court of Customs and Patent Appeals shall be deemed to be a reference to the United States Court of Appeals for International Trade, Patents, and Trademarks.

EFFECT ON CUSTOMS COURT JUDGES

SEC. 703. (a) Except as provided in subsection (b) of this section, the amendments made by title I of this Act shall not affect the status of any individual serving as judge or chief judge of the Customs Court on the date of enactment of this Act.

(b) The requirement that a person may not continue to serve as chief judge of the Court of International Trade after having reached the age of seventy years, as set forth in the amendment made by section 101 of this Act, shall apply to any individual serving as chief judge on or after the date of enactment of this Act.

EFFECT ON PENDING CASES

SEC. 704. Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment of this Act under jurisdictional statutes relating to the Customs Court or the Court of Customs and Patent Appeals as in effect immediately prior to such date of enactment.

I. PURPOSE

H.R. 7540, as amended, provides for significant and much-needed reform and clarification in the laws governing the United States Customs Court. Over the years, complex questions have arisen concerning the jurisdiction of the Customs Court, its scope of review, and the type of relief the court may award. Periodically, Congress has addressed these issues and has altered the court's status, jurisdiction and powers to solve a specific problem or to meet a specific need at a particular time. The result is a patchwork of laws that does not always serve the public interest.

The Customs Court had its genesis in 1890 as the Board of General Appraisers, an administrative unit within the Department of the Treasury, which was responsible for the review of decisions by Customs officials as to the rate and amount of duty imposed on imported merchandise, as well as the value of such merchandise. In 1926, as the types of decisions pertaining to import transactions expanded, Congress established the United States Customs Court, as an Article I court, to replace the outmoded Board. Even though the 1926 legislation sought to provide greater judicial review and uniformity in the decisionmaking process, it did not make any essential changes in the functions, duties or jurisdiction of the newly created court. In the following 30-year period the court gradually became an integral part of the federal judicial system. In 1956, Congress declared the Customs Court to be a court "established under Article III of the Constitution of the United States." (28 U.S.C. § 251.)

In 1970, Congress recognized that the court's procedures and jurisdiction were in need of significant revision. At the time, Congress focused its legislative efforts on the Customs Courts Act of 1970, which made sweeping procedural reforms in the workings of the Customs Court. The 1970 legislation, however, still left the substantive issues regarding the jurisdiction and powers of the court unresolved.

With the passage of the Trade Agreements Act of 1979, the Customs Court was charged with new and increased responsibilities in the field of international trade litigation, particularly with regard to anti-dumping and countervailing duty cases. The 1979 Act, for the first time, authorized the court to grant injunctive relief in certain limited circumstances.

The primary statutes governing the United States Customs Court have not kept pace with the increasing complexities of modern day international trade litigation. The majority of cases before the Customs Court traditionally involve classification and valuation issues. In almost all of these cases, the court could only agree or disagree with the decision of the administrative agency. The court could not issue money judgments, nor, until 1980, could it provide equitable relief. The process which began in 1890 has resulted in "a jigsaw puzzle with

enough missing pieces to make it difficult for any but the closest observer to discover what the completed puzzle was intended to depict."¹

The jurisdictional statutes of the Customs Court were drafted at a time when tariff rates were an essential factor in international trade. Congress was most sensitive to this and thus was primarily concerned with establishing methods for the judicial review of administrative determinations pertaining to the classification and valuation of imported merchandise. While these statutes did not always recognize the principle of having a decisive impact on the rate of duty ultimately assessed, the overall statutory scheme was constructed to facilitate challenges to classification and valuation determinations.

Multilateral negotiations have led to a significant decrease in tariff duties and consequently a diminishing importance in classification and valuation cases in the overall spectrum of international trade litigation. In their place other measures, such as antidumping and countervailing duty statutes, have assumed a greater importance. The net result has been a significant increase in the number of suits challenging Governmental determinations in these areas.

Many suits involving international trade issues are and have been instituted in the federal district courts rather than the U.S. Customs Court. One reason is that often it is difficult to determine in advance whether or not a particular case falls within the jurisdictional scheme of the Customs Court, that is, an action primarily challenging classification and valuation determinations. In addition, because of the limited powers of the Customs Court, litigants often choose another forum, for example, the federal district courts, where they can gain the appropriate relief for their alleged injuries. Most district courts have refused to entertain such suits, citing the Constitutional mandate requiring uniformity in decisions relating to imports. (See U.S. Const. art. I, § 8.) In so doing, the district courts sought to preserve the Congressional grant of exclusive jurisdiction to the United States Customs Court for judicial review of all matters relating to imports.

The result has been inconsistent judicial decisions with litigants proceeding cautiously when choosing a forum for judicial review. If an improper forum is chosen, that may well result in a holding that the plaintiff is before the wrong court. A dismissal for want of jurisdiction can effectively preclude a judicial determination of the case on its merits. Furthermore, the type of relief available depends greatly upon a plaintiff's ability to persuade a court that it possesses jurisdiction over a particular case. Thus, some individuals will obtain relief which is denied others, who by chance select an improper forum to institute suit.

With the growth in international trade, the number of suits in the district courts and subsequent dismissals for want of jurisdiction have increased. Congress is greatly concerned that numerous individuals and firms, who believe they possess real grievances, are expending significant amounts of time and money in a futile effort to obtain judicial review of the merits of their case.

¹ "Customs Courts Act of 1980," Hearings before the Subcommittee on Monopolies and Commercial Law, House Committee on the Judiciary, on H.R. 6394, a bill to improve the Federal Judicial machinery by clarifying and revising certain provisions of Title 28, United States Code, relating to the judiciary and judicial review of international trade matters, 96th Congress, 2nd session, Ser. 31, at 7 (1980).

H.R. 7540 corrects these inequities by revising the statutes to clarify the present status, jurisdiction and powers of the Customs Court. The Customs Courts Act of 1980 creates a comprehensive system of judicial review of civil actions arising from import transactions, utilizing the specialized expertise of the United States Customs Court and the United States Court of Customs and Patent Appeals. This comprehensive system will ensure greater efficiency in judicial resources and uniformity in the judicial decisionmaking process.

The bill also assures aggrieved parties better access to judicial review of a civil action arising out of an import transaction. Such access is not presently assured due to jurisdictional conflicts caused by the ill-defined division of jurisdiction between the Customs Court and the federal district courts. Most importantly, H.R. 7540 perfects the status of the Customs Court by providing it with all the necessary remedial powers in law and equity possessed by other federal courts established under Article III of the Constitution.

H.R. 7540 complements Title X of the Trade Agreements Act of 1979, which provided for judicial review of certain types of agency determinations principally relating to antidumping and countervailing duty determinations. Unfortunately, the 1979 Act did not set forth many of the procedures and time limits necessary for the commencement of these civil actions. The Customs Courts Act of 1980 fills these voids.

Finally, this legislation changes the name of the United States Customs Court to the United States Court of International Trade. The new name more accurately describes the court's clarified and expanded jurisdiction and its new judicial functions relating to international trade.

Some corresponding changes are made in the statutes governing the powers, procedures and jurisdiction of the United States Court of Customs and Patent Appeals to ensure uniformity in the judicial decisionmaking process relating to imported merchandise. H.R. 7540 also changes the name of the United States Court of Customs and Patent Appeals to the United States Court of Appeals for International Trade, Patents and Trademarks. These changes are necessitated by the substantial revisions to the statutes governing the United States Customs Court.

II. SUMMARY OF REPORTED BILL

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

Section 101

Section 101 amends the present statutory provision, 28 U.S.C. § 251, relating to the appointment and the number of judges of the United States Court of International Trade and the designation of the Chief Judge of that court. The section also reaffirms the Article III status of the court.

Section 102

Section 102 amends 28 U.S.C. §§ 293(b) and (d) relating to the temporary assignment of a judge of the United States Court of Interna-

tional Trade to serve as a judge of a federal district court, a United States court of appeals, the United States Court of Claims or the United States Court of Appeals for International Trade, Patents and Trademarks.

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

Section 201

Section 201 repeals the current statutes relating to the jurisdiction of the United States Customs Court now contained in Chapter 95, Title 28, United States Code, and substitutes for those provisions five new sections which define the jurisdiction and powers of the Court of International Trade.

Proposed section 1581 grants the Court of International Trade jurisdiction over any civil action against the United States arising out of the federal statutes governing import transactions. The court's jurisdiction encompasses the traditional types of cases involving classification and valuation issues along with the authority to review certain administrative agency determinations made pursuant to the Trade Agreements Act of 1979, particularly with regard to antidumping and countervailing duty investigations. In addition, the court will have jurisdiction to review administrative determinations certifying or refusing to certify workers, firms or communities as eligible for adjustment assistance. Furthermore, the court will have jurisdiction to review decisions of the Secretary of the Treasury regarding the denial, revocation or suspension of a customhouse broker's license.

Proposed section 1582 grants the Court of International Trade jurisdiction over certain Government civil actions arising under the federal statutes governing import transactions. In particular, this section authorizes the court to hear civil penalty actions alleging fraud or negligence and actions seeking recovery on a customs bond or of customs duties.

Proposed section 1583 grants the Court of International Trade jurisdiction over counterclaims, cross-claims, or third-party actions involving the imported merchandise that is the subject of the civil action pending before the Court of International Trade.

Proposed section 1584 is a procedural provision which will allow the courts to correct defects in jurisdiction by transferring an action to the proper court. Thus, a case can be transferred from a district court to the Court of International Trade, or vice versa, when the court determines that the action should have been commenced in the other court in the first instance.

Proposed section 1585 grants the Court of International Trade all the powers in law and equity possessed by a federal district court. Under existing law, the Customs Court's remedial powers are generally limited to agreeing or disagreeing with the final determination of an administrative agency. Under section 1585, the court will have the authority to afford relief appropriate to the case before it, including, but not limited to, a money judgment, a writ of mandamus or injunctive relief.

TITLE III—COURT OF INTERNATIONAL TRADE PROCEDURE

Section 301

Section 301 strikes the current provisions of Chapter 169, Title 28, United States Code, and substitutes seventeen new provisions governing court procedures in the Court of International Trade.

Proposed section 2631 establishes standing requirements for those who commence a civil action in the Court of International Trade. While standing to sue in the Customs Court, for the most part, has been limited to importers, American manufacturers, producers and wholesalers, the Trade Agreements Act of 1979 provided greater access to judicial review for others who may be adversely affected or aggrieved by import transactions. H.R. 7540 continues this trend by granting standing to American workers, communities and manufacturers of similar products in addition to the traditional parties with a right to sue for relief in the Court of International Trade. This section also establishes the requirements for intervention in civil actions in the Court of International Trade.

Proposed section 2632 sets forth the requirements governing the commencement of a civil action in the Court of International Trade by the filing of a summons, or a summons and complaint, as the case may be.

Proposed section 2633 provides that a filing fee is to be paid upon the commencement of a civil action in the Court of International Trade. In addition, this section prescribes the manner for service of official papers.

Proposed section 2634 requires that all parties to a civil action before the Court of International Trade be given reasonable notice of the time and place of the trial or hearing.

Proposed section 2635 sets forth the requirements concerning the filing of official documents with the Court of International Trade and the authority of the court to disclose such documents.

Proposed section 2636 sets forth the various statutes of limitations governing the commencement of civil actions in the Court of International Trade.

Proposed section 2637 establishes the requirements pertaining to the exhaustion of administrative remedies for the commencement of a civil action in the Court of International Trade.

Proposed section 2638 concerns itself with the assertion of new grounds in support of a civil action commenced under section 515 of the Tariff Act of 1930.

Proposed section 2639 sets forth the requirements regarding the burden of proof in certain civil actions commenced in the Court of International Trade. This section also provides for the introduction of depositions, affidavits, reports and catalogs where the value of imported merchandise or any of its component parts are in issue.

Proposed section 2640 specifies the scope and standard of review to be applied in civil actions commenced in the Court of International Trade. *De novo* review is the general rule for the majority of civil actions commenced in the Court of International Trade. Countervailing and antidumping duty cases are to be reviewed according to the

standard set forth in 516A of the Tariff Act of 1930. Challenges to a determination certifying or refusing to certify workers, firms, or communities as eligible for adjustment assistance are reviewed in accordance with the standards provided in the Trade Act of 1974. All other cases are subject to review under the Administrative Procedures Act, 5 U.S.C. § 706.

Proposed section 2641 states the requirements regarding the introduction of evidence, the examination and cross-examination of witnesses, and the inspection of documents in a civil action commenced in the Court of International Trade.

Proposed section 2642 authorizes the Court of International Trade to order an analysis of imported merchandise and a report thereon by laboratories or agencies of the United States.

Proposed section 2643 sets forth the various types of relief that may be ordered by the Court of International Trade. Under this provision the court has the authority to grant plenary relief. Such remedies include, but are not limited to, money judgments, writs of mandamus, and preliminary or permanent injunctions.

Proposed section 2644 authorizes the Court of International Trade to award interest to a successful plaintiff on a refund of customs duties. Interest runs from the date of the filing of the summons to the date of the refund at the rate established under section 6621 of the Internal Revenue Code of 1954.

Proposed section 2645 provides for the issuance of opinions, findings of fact, and conclusions of law by the Court of International Trade. This section also provides that the court may amend its findings or judgment on motion of a party or *sua sponte*. Finally, this section states that a decision of the court is final and conclusive unless a retrial or rehearing is granted or an appeal is taken to the Court of Appeals for International Trade, Patents and Trademarks.

Proposed section 2646 authorizes the Court of International Trade to grant a retrial or a rehearing upon motion of a party or *sua sponte*.

Proposed section 2647 sets the priorities of civil actions in the Court of International Trade.

Section 302

Section 302 amends Chapter 121, Title 28, United States Code, to provide the mechanisms for conducting jury trials in the United States Court of International Trade.

TITLE IV—UNITED STATES COURT OF APPEALS FOR INTERNATIONAL TRADE, PATENTS AND TRADEMARKS

Section 401

Section 401 amends certain provisions of Title 28, United States Code, governing the jurisdiction of the United States Court of Customs and Patent Appeals, renamed by this bill the United States Court of Appeals for International Trade, Patents and Trademarks, over appeals of decisions of the Court of International Trade. It also provides the court with jurisdiction to review ITC determinations made under section 337 of the Tariff Act of 1930 pertaining to unfair practices in import trade.

Section 402

Section 402 provides that the United States Court of Appeals for International Trade, Patents and Trademarks shall have all the powers of law and equity possessed by a United States court of appeals.

Section 403

Section 403 amends 28 U.S.C. § 2601 by clarifying the court procedures governing appeals of decisions of the Court of International Trade to the United States Court of Appeals for International Trade, Patents and Trademarks. This section also amends 28 U.S.C. § 2602 by setting forth the new order of priorities of international trade civil actions in the Court of Appeals for International Trade, Patents and Trademarks.

Section 404

Section 404 provides for the application of the Federal Rules of Evidence to proceedings in the United States Court of Appeals for International Trade, Patents and Trademarks.

Section 405

Section 405 authorizes a judicial conference for the United States Court of Appeals for International Trade, Patents and Trademarks.

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

Section 501

Section 501 contains a technical amendment that changes the name of the Customs Court to the Court of International Trade in various provisions of Title 28, United States Code.

Section 502

Section 502 contains a technical amendment that changes the name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks in various provisions of Title 28, United States Code.

Section 503

Section 503 contains a technical amendment that changes the name of the Customs Court to the Court of International Trade in 28 U.S.C. § 252.

Section 504

Section 504 contains an amendment to 28 U.S.C. § 518(a). The amendment establishes the Department of Justice as the agency responsible for the coordination of positions taken by the Government in suits in the Court of International Trade.

Section 505

Section 505 contains a technical amendment to 28 U.S.C. § 751, which provides that when the Court of International Trade sits in a judicial district other than the Southern or Eastern Districts of New York, the clerk of the district court in which the Court of International Trade is sitting shall serve as the Clerk of the Court of International Trade.

Section 506

Section 506 amends 28 U.S.C. § 1337 to clarify the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 507

Section 507 amends 28 U.S.C. § 1352 to clarify the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 508

Section 508 amends 28 U.S.C. § 1355 to clarify the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 509

Section 509 amends 28 U.S.C. § 1356 to clarify the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 510

Section 510 amends 28 U.S.C. § 1491 to clarify the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 511

Section 511 amends 28 U.S.C. § 1919 to authorize the Court of International Trade to award costs in the same circumstances in which costs are awarded by a United States district court.

Section 512

Section 512 adds a new section to Chapter 125, Title 28, United States Code, to provide for the registration in any judicial district of money judgments entered by the Court of International Trade.

Section 513

Section 513 amends 28 U.S.C. § 2414 to authorize the payment of money judgments entered by the Court of International Trade in the same manner as the payment of other money judgments against the United States ordered by a district court.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

Section 601

Section 601 contains a technical amendment which changes the name of the Customs Court to the Court of International Trade in various provisions of law not found in Title 28, United States Code.

Section 602

Section 602 contains a technical amendment which changes the name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks in various provisions of law not found in Title 28, United States Code.

Section 603

Section 603 repeals the first section of the Act entitled “An Act to provide the name by which the Board of General Appraisers and members thereof shall be known.”

Section 604

Section 604 clarifies the standard under which the Court of Appeals for International Trade, Patents and Trademarks will review a civil action brought pursuant to section 337(c) of the Tariff Act of 1930.

Section 605

Section 605 contains two technical amendments to section 514(a) of the Tariff Act of 1930. The first conforms that section to the changes made by proposed section 1581(a), as contained in section 201 of this bill. The second change conforms section 514(a) to the changes made by proposed section 2636, as contained in section 301 of this bill.

Section 606

Section 606 contains a technical amendment to section 515(b) of the Tariff Act of 1930 to reflect the amendment made by the proposed section 1581, as contained in section 201 of this bill.

Section 607

Section 607 contains two technical amendments to section 516 of the Tariff Act of 1930. The first clarifies the definitions of “domestic interested party” and “interested party”, as set forth in the Trade Agreements Act of 1979. The second reflects the amendments made by the proposed Chapter 169, as contained in section 301 of this bill.

Section 608

Section 608 amends section 516A of the Tariff Act of 1930 in four respects. First, it harmonizes the Tariff Act with the amendments made by the proposed sections 2636(c) and (d), as contained in section 301 of this bill. Second, it harmonizes the Tariff Act with changes made by the proposed Chapter 169, Title 28, United States Code, as contained in section 301 of this bill. Third, it conforms section 516A to the changes made by the proposed section 2643(c)(1), as contained in section 301 of this bill. Finally, it empowers the Court of International Trade to prescribe rules relating to the form, style and content of the notice provision required by section 516A of the Tariff Act of 1930.

Section 609

Section 609 contains a technical amendment to section 592(e) of the Tariff Act of 1930. This conforming change is necessary because proposed section 1582, as contained in section 201 of this bill, grants the Court of International Trade jurisdiction over civil penalty actions.

Section 610

Section 610 contains a technical amendment to section 604 of the Tariff Act of 1930 to reflect the changes made by proposed section 1582, as contained in section 201 of this bill, regarding the prosecution of civil penalty actions.

Section 611

Section 611 contains a technical amendment necessitated by the amendment made by the proposed section 1581(g), as contained in section 201 of this bill, regarding the revocation or suspension of a customhouse broker's license.

Section 612

Section 612 repeals section 250 of the Trade Act of 1974. This amendment is necessitated by the grant of jurisdiction in proposed section 1581(d), as contained in section 201 of this bill.

Section 613

Section 613 conforms the Trade Act of 1974 to proposed section 1581(d), as contained in section 201 of this bill, regarding judicial review by the Court of International Trade of a determination certifying or refusing to certify workers, firms or communities as eligible for adjustment assistance.

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

Section 701

Section 701 sets forth the various effective date provisions governing this bill.

Section 702

Section 702 contains a general technical amendment that provides for a change in the name of the Customs Court to the Court of International Trade and a change in the name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks in any statute or regulation of the United States.

Section 703

Section 703 preserves the status of any individual serving as Chief Judge or a judge of the Customs Court with respect to the amendments made by this bill.

Section 704

Proposed section 704 provides that no case pending in the Customs Court or the Court of Customs and Patent Appeals shall be dismissed because of the enactment of the Customs Courts Act of 1980.

III. BACKGROUND

H.R. 7540 provides for significant and much-needed reform and clarification of the statutes governing the status, jurisdiction and powers of the United States Customs Court. This legislation seeks to accomplish several major goals:

1. The explicit grant of all judicial powers in law and equity to the Court of International Trade, as the Customs Court is redesignated, thereby completing the full transformation of the Customs Court to an Article III court;
2. The elimination of the political affiliation requirement in the selection of the judges;

3. The re-emphasis and clarification of Congress' intent that the expertise and national jurisdiction of the Court of International Trade and the Court of Appeals for International Trade, Patents and Trademarks be exclusively utilized in the resolution of conflicts and disputes arising out of the tariff and international trade laws, thereby eliminating the present jurisdictional conflicts between these courts and the federal district and appellate courts;

4. The transfer of exclusive jurisdiction to the Court of International Trade for civil actions for the recovery of civil penalties under the tariff and international trade laws, the recovery on a bond relating to imports and the recovery of customs duties;

5. The transfer of exclusive jurisdiction to the Court of International Trade for civil actions to review administrative determinations certifying and refusing to certify workers, firms or communities as eligible for adjustment assistance, and to review administrative decisions to revoke, suspend, or deny a custom-house broker's license;

6. The grant of authority to the Court of International Trade to conduct jury trials;

7. The enlargement of the class of persons eligible to sue in civil actions in the Court of International Trade to include exporters, trade associations, consumer groups, foreign governments and those who would otherwise be adversely affected or aggrieved by administrative decisions or litigation arising out of our international trade and tariff laws; and

8. The clarification of the record requirements and scope and standard of review for civil actions in the Court of International Trade.

Congress endeavored to address many of these issues in previous legislative efforts, dating back to the late 1960's. At that time, Congress recognized that the status, procedures, jurisdiction and powers of the United States Customs Court needed significant revision. The scope of that task was so broad that Congress chose to focus its legislative efforts on the Customs Courts Act of 1970, which made sweeping procedural reforms in the workings of the court. However, with the passage of the 1970 Act, the substantive issues regarding the status, jurisdiction and powers of the court remained unresolved.

The 95th Congress again focused attention on the resolution of substantive questions of the status, jurisdiction and powers of the United States Customs Court. Much of the dissatisfaction with the initial Senate bill, S. 2857, centered on those provisions that effectuated trade policy decisions resulting from multilateral trade negotiations. In addition, the bill did not clarify the Article III status of the judges of the court, nor did it provide increased access to the federal judicial system for the review of decisions by federal administrative agencies pertaining to import transactions. The legislation also failed to establish a comprehensive system for judicial review of disputes or conflicts arising out of the tariff and international laws. Finally and most importantly, S. 2857 did not explicitly grant plenary judicial powers to the Customs Court, or satisfactorily resolve the jurisdictional conflicts between the federal district courts and the Customs Court.

At the beginning of the 96th Congress, separate legislation was introduced, and subsequently enacted, to implement the international trade agreements reached at the Tokyo Round of the Multilateral Trade Negotiations. Title X of the Trade Agreements Act of 1979 provided for new and expanded responsibilities for the United States Customs Court. The 1979 Act created new causes of action that could be asserted in the Customs Court and established that a party could seek judicial review of any Governmental action or inaction respecting international trade and customs disputes, particularly with regard to antidumping and countervailing duty determinations. Furthermore, the Act authorizes the Customs Court, for the first time, to grant injunctive relief in certain circumstances.

Subsequent to the enactment of the Trade Agreements Act, H.R. 6394, the predecessor of H.R. 7540, was introduced in the House of Representatives. A representative of the ABA testified that "Customs Court reform legislation is a necessary companion to Title X of the Trade Agreements Act."² Many witnesses indicated that such legislation "is badly needed and long overdue."³

H.R. 7540 enjoys substantial support. The Subcommittee on Monopolies and Commercial Law held two days of hearings on H.R. 6394. On the basis of its underlying goals, the legislation received the strong endorsement of the Administration, which was represented by the Departments of Justice, Treasury and Commerce; the International Trade Commission; the Administrative Conference of the United States; the Judicial Conference of the United States; the United States Customs Court; and the United States Court of Customs and Patent Appeals. In addition, the Subcommittee received very favorable testimony from the ABA's Standing Committee on Customs Law, the Association of the Customs Bar, representatives of the customhouse brokers, and private international trade and customs law practitioners. H.R. 6394 was amended by the Subcommittee to incorporate the recommendations of many of the witnesses. The Subcommittee unanimously reported a clean bill, H.R. 7540, to the full Judiciary Committee for its consideration. By voice vote, the Committee on the Judiciary then favorably reported the bill to the House.

Judge Edward D. Re, Chief Justice of the United States Customs Court, testified that the Customs Court Act of 1980:

will implement the constitutional mandate, which provides that "all Duties, Imports, and Excises shall be uniform throughout the United States", by utilizing the national jurisdiction of the Customs Court to provide uniform and consistent interpretation and application of the laws involved in disputes arising out of import transactions.⁴

Such uniformity is threatened today because the federal district courts have jurisdiction over all international trade cases which are not within the exclusive jurisdiction of the United States Customs Court. See, e.g., 28 U.S.C. § 1340. In addition, the intricacies of the Customs Court's jurisdictional statutes and the complexities of international trade litigation have rendered it exceedingly difficult for

² Hearings, at 147.

³ See, e.g., Hearings, at 111.

⁴ Hearings, at 8.

litigants to determine whether or not a particular case comes within the jurisdiction of the Customs Court and is, therefore, excluded from the jurisdiction of the district courts. This has resulted in considerable confusion by litigants and the courts. See *SCM Corp. v. United States International Trade Commission*, 549 F. 2d 812 (D.C. Cir. 1977). Some district courts have asserted jurisdiction over international trade actions. See *Sneaker Circus v. Carter*, 566 F. 2d 396 (2d Cir. 1977); *Timken Co. v. Simon*, 539 F. 2d 221 (D.C. Cir. 1976). However, other district courts have compounded this problem by dismissing such actions for want of jurisdiction. See *Consumers Union of United States v. Committee for the Implementation of Textile Agreements*, 561 F. 2d 872 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 933 (1977); *Committee to Preserve American Color Television v. W. Michael Blumenthal*, D.D.C. Civil Action No. 79-1207 (appeal pending, C.A.D.C. No. 79-1948); *The American Distilling Co. v. Strauss*, D.D.C. Civil Action No. 79-931.

The dismissal of these actions, after great expenditures of time and resources, has produced frustration on the part of litigants and the courts. H.R. 7540 will resolve this problem by defining the demarcation between the jurisdiction of the Court of International Trade and the federal district courts.

All of the witnesses stressed the importance of achieving the stated goals of the Customs Courts Act of 1980 in ensuring a uniform procedure for the judicial review of international trade disputes. However, the hearings brought out some concerns of both the Members and the witnesses that subsequently were resolved in the Subcommittee and full Committee mark-ups.

During the hearings, Congressman Robert McClory questioned whether the existing statutory requirement for balanced political party membership on the court, 28 U.S.C. § 251, should be deleted. The original bill, H.R. 6394, did not contain the political affiliation requirement that "not more than five of such judges shall be from the same political party."⁵ The requirement was not included because it is a legacy of the Customs Court's evolution from an administrative board within the Treasury Department, known as the Board of General Appraisers, to its present status as an Article III court.⁶

Several witnesses indicated that retention of the political affiliation requirement was inconsistent with the court's status as an Article III court. In fact, "there is no provision of law for Federal judges of other article III courts to be appointed according to party affiliation."⁷ Despite this admonition, the Subcommittee on Monopolies and Commercial Law adopted an amendment to retain the political affiliation requirement of the existing statute, 28 U.S.C. § 251. The Subcommittee reasoned that the international trade statutes are laden heavily with differing policy considerations which ought to be reflected in the composition of the judicial tribunal responsible for resolving disputes arising out of the interpretation of those statutes.

⁵ 28 U.S.C. § 251.

⁶ According to Andrew P. Vance, it was politically important for the Board of General Appraisers to maintain a balance between members with a high tariff philosophy and members with a low tariff philosophy. With a declining emphasis on the role of tariffs in international trade policy, it has become less necessary to maintain this political affiliation requirement. See Hearings, at 194.

⁷ Hearings, at 13.

Prior to the full Committee's consideration of this issue, several of the witnesses voiced their continuing objection to the inclusion of the political affiliation requirement. Regarding this issue, the Administrative Conference of the United States stated:

A political affiliation balancing requirement may make sense in the context of appointees to regulatory boards and commissions, since such officials have relatively short terms, and are charged with making policy decisions often heavily tinged with political considerations. However, we believe that life-tenured judges of an Article III court, who make decisions on the basis of assessment of facts and interpretations of law, should be appointed . . . without regard to any political considerations. The retention of the political affiliation provision will only tend to politicize the Court—a result at odds with the bill's laudable goals of enhancing the importance and effectiveness of the court.⁸

The Subcommittee on Monopolies and Commercial Law received similar comments from the Department of Justice, the ABA's Standing Committee on Customs Law, and the Association of the Customs Bar advising against the retention of the political affiliation requirement. In light of these comments, the full Judiciary Committee struck the provision from section 101 of H.R. 7540.

The scope of jurisdiction of the Court of International Trade was a principal concern to the Subcommittee on Monopolies and Commercial Law and the full Committee. The Subcommittee initially focused its attention on the grant of jurisdiction to the Court of International Trade to review the advice, findings, recommendations, and determinations of the International Trade Commission or the United States Trade Representative under certain statutes "solely for the purpose of determining the procedural regularity of such action."⁹

Pursuant to his statutory authority, the President may take certain actions to protect the United States and American manufacturers against injury due to the importation of foreign goods. These statutes specify that the President may not act until he has received advice from the International Trade Commission (ITC) or the U.S. Trade Representative (USTR). Current law does not provide for the judicial review of the substantive advice rendered by the ITC or the U.S. Trade Representative.

⁸ Letter from Richard K. Berg, Executive Secretary, Administrative Conference of the United States, to Chairman Peter W. Rodino, Jr., June 2, 1980, "Customs Courts Act of 1980."

⁹ Proposed sections 1581(d) and 1581(e) of H.R. 6394, the initial House version of the Customs Courts Act of 1980, read as follows:

"(d) (1) After the decision of the President has become final and has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review the advice, findings, recommendations, and determinations of the International Trade Commission under section 131, 201, 202, 203, 304, 406, and 503 of the Trade Act of 1974, section 336 and 338 of the Tariff Act of 1930, and section 22 of the Agricultural Adjustment Act, solely for the purpose of determining the procedural regularity of such actions.

(2) If no advice, findings, recommendations, or determinations have been provided to the President by the International Trade Commission, the Court of International Trade shall have exclusive jurisdiction to review the advice, findings, recommendations, and determinations of the Commission under the sections specified in paragraph (1) of this subsection, solely for the purposes of determining the procedural regularity of such action.

(e) After the decision of the President has become final and has been published in the Federal Register, the Court of International Trade shall have exclusive jurisdiction to review any action of the Office of the United States Trade Representative under section 302(b)(1) or 304 of the Trade Act of 1974, solely for the purposes of determining the procedural regularity of such action."

However, it was unclear whether the absence of any right of review of the ITC's or USTR's substantive advice extended to compliance by these agencies with the procedural requirements of the relevant statutes. Some of the statutes have specific procedural requirements, such as notices and hearings, while others are silent as to procedure.¹⁰ H.R. 6394 granted the Court of International Trade jurisdiction to review the actions of the ITC or USTR in advising the President "solely for the purpose of determining the procedural regularity" of those actions, thereby safeguarding the rights of a party who may be adversely affected by any such advice.

Both the Justice Department and the ABA argued that if this grant of jurisdiction was not included in H.R. 6394, litigants would seek review of these matters in the district courts. They believed such a result would be contrary to an intended purpose of this legislation, the creation of a uniform body of case law for international trade litigation in the Customs Court.¹¹ David Cohen, on behalf of the Department of Justice, indicated that the deletion of sections 1581(d) and (e) would leave the state of the law as it exists today. However, the Department of Justice contended that if the Court of International Trade assumed jurisdiction over actions for review of procedural regularity, it would do so "under the general jurisdictional provision contained in subsection 1581[(i)]."¹²

Under current law, the President is not required to act in accordance with the substantive advice of the ITC or USTR. He may consider other factors, such as the implications of his decisions on U.S. foreign policy, in deciding whether or not to protect American manufacturers from imports. Congress, in enacting various tariff and trade bills, has made it clear that those Presidential decisions are not subject to judicial review but will be reviewed in the course of Congress' consideration of subsequent international trade legislation.

The Subcommittee sought from the witnesses an explanation of the potential remedies available to a party adversely affected or aggrieved by a procedural irregularity by the ITC or USTR. The hearings proved inconclusive as to whether the existence of a procedural irregularity by the ITC or USTR would require any change in their advice to the President and how this advice would affect the President's ultimate decision.

In light of the prior pronouncements by Congress that did not permit judicial review of the ITC's and USTR's advice to the President, the Subcommittee chose to delete sections 1581(d) and (e) from H.R. 6394.

Under section 641 of the Tariff Act of 1930, the United States courts of appeals have jurisdiction to review a decision by the Secretary of the Treasury to deny, revoke or suspend a customhouse broker's license. In keeping with the overall purpose of the Customs Courts Act of 1980, H.R. 6394 transferred jurisdiction over these actions to the United States Court of Appeals for International Trade, Patents and Trademarks. (*See* section 401(c)(1) of H.R. 6394).

This transfer of jurisdiction met with some resistance from the representatives of the customhouse brokers. They testified that the

¹⁰ See, e.g., sections 131, 201, 202, 203, 304, 406, and 503 of the Trade Act of 1974.

¹¹ Hearings, at 75 and 141.

¹² Hearings, at 75.

provision in H.R. 6394 imposed an undue economic hardship on customhouse brokers by requiring them to travel to Washington, D.C., for a hearing before the Court of Appeals for International Trade, Patents and Trademarks. It was the opinion of the National Customs Brokers & Forwarders Association that "the existing right of an aggrieved customhouse broker to have his complaint heard without undue expense in his own territory" should be preserved, in particular by permitting concurrent jurisdiction between the Court of Appeals for International Trade, Patents and Trademarks and the United States courts of appeals.¹³

In an effort to protect the rights of an aggrieved customhouse broker and at the same time preserve the goal of uniformity of jurisdiction over civil actions involving the international trade laws, the Subcommittee suggested granting exclusive jurisdiction over these actions to the United States Court of International Trade. None of the witnesses, including the ABA and the Justice Department, objected to this suggestion. In fact, the National Customs Brokers & Forwarders Association stated that:

Since the new Court of International Trade (now the United States Customs Court) is set up to hold, and has in the past held, hearings from time to time at various ports in the country, while the new Court of Appeals for International Trade, Patents and Trademarks has not, and does not regularly do so, our present objection . . . would be removed.¹⁴

Accordingly, the Subcommittee adopted an amendment vesting exclusive jurisdiction over these civil actions in the Court of International Trade, now found in proposed section 1581 (g), as contained in section 201 of H.R. 7540.

Section 201 of H.R. 6394 added a new section 1581 (i) to Title 28, United States Code, granting broad residual jurisdiction to the United States Court of International Trade. This section granted the court jurisdiction over those civil actions which arise directly out of an import transaction and involve one of the many international trade laws. The purpose of this section was to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the federal district courts and the Court of International Trade. This language made it clear that all suits of this type are properly commenced only in the Court of International Trade and not in a district court. Thus, the Committee did not intend to create any new causes of action, but merely to designate definitively the appropriate forum.

Despite its stated purpose, Congressman Charles Vanik, Chairman of the Subcommittee on Trade of the House Ways and Means Committee, expressed concern "that the wording of this subsection is so broad and ambiguous (e.g., when does a civil action 'involve' the enumerated statutes?) as to continue the blurred jurisdictional division between this Court and the district courts."¹⁵ Additionally, there was concern that the listing of specific statutes would result in an inadvertent omission of a statute, thereby creating further confusion

¹³ Hearings, at 264.

¹⁴ Letter from William R. Casey, President, National Customs Brokers & Forwarders Association of America, Inc., to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 282.

¹⁵ Hearings, at 295.

in the minds of international trade law litigants. In light of its concerns, the Subcommittee on Trade recommended a generic approach rather than a specific listing of statutes in an effort to provide greater protection for the rights of persons involved in disputes arising out of import transactions. In response to the concerns raised by the Subcommittee on Trade, the full Judiciary Committee adopted an amendment utilizing the generic approach. Under proposed section 1581(i) of H.R. 7540, as amended, the Court of International Trade has jurisdiction over those civil actions which arise out of a law of the United States pertaining to international trade.

H.R. 6394, as introduced, did not provide for jury trials in the Court of International Trade, instead providing in proposed section 1582 for transfer of actions involving jury trials to the district courts. Thus, if either party to a civil action brought by the United States in the Court of International Trade desired a trial by jury, then that party would have to request a transfer of the action to a federal district court.

This lack of authority for the Court of International Trade to conduct a jury trial was of significant concern to the Subcommittee. During the hearings, Congressman M. Caldwell Butler inquired into the competence of the court to conduct jury trials. He was also interested in the justification for transferring such trials to the federal district courts. Judge Edward D. Re, Chief Judge, United States Customs Court, testified that "[t]here is no doubt that the court is competent to conduct jury trials. As an Article III court, it has the power, the expertise, and the skills. There is no question that it can."¹⁶

He also stated that [t]radition and current practice plus the possibility of avoiding a complexity of procedure that would involve a budgetary impact are the reasons why the court has functioned without a jury.¹⁷ The Department of Justice was of the opinion that the difficulty was a logistical one; however, assuming that the problems could be solved—namely, a determination as to which jury roll would be used, who would perform the function of helping to select names for the jury panel, and the courtroom availability problem—there is no reason in principle why the Court could not be given the authority to conduct jury trials.¹⁸

Almost all of the witnesses, including those speaking for the court, the Administration, and the private bar, saw little reason to retain the transfer provision. Furthermore, they saw no need for establishing a separate jury wheel for the selection of jurors in an action before the Court of International Trade. They stated that the court could utilize the jury panel wheel employed by the federal district court in the district in which the Court of International Trade is hearing the case.¹⁹

In accordance with the recommendations of the witnesses, the Subcommittee struck the transfer provision from proposed section 1582 and adopted an amendment authorizing the United States Court of International Trade to conduct jury trials in the manner set forth in section 302 of H.R. 7540.

¹⁶ Hearings, at 16.

¹⁷ Hearings, at 17.

¹⁸ Hearings, at 67.

¹⁹ Hearings, at 197. See also letter from David M. Cohen, Director, Commercial Litigation Branch, Civil Division, Department of Justice, to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 79-82.

As introduced, H.R. 6394 contained a provision in section 201, proposed section 1583, which authorized the Court of International Trade to render judgment on any counterclaim by the United States arising out of "an import transaction that is the subject of a civil action" pending before the court.

Proposed section 1583 changes the current law particularly with regard to valuation cases. Under current law, when a plaintiff challenges the valuation of merchandise by the Customs Service in the Customs Court, he must sustain a dual burden of proof. First, the plaintiff has to demonstrate that the original valuation of the Customs Service is erroneous and then must establish the new lower valuation. The United States may defend the action either by claiming that the original valuation is correct or by asserting in the alternative that if the original valuation is incorrect, the goods should be valued at an amount higher than that claimed by the plaintiff. In cases in which the plaintiff has demonstrated that the original valuation is erroneous, but where the Government has proven a higher valuation, the Customs Court has not required the plaintiff to pay the higher duties. In those instances, the court has dismissed the action. However, all subsequent imports of the same goods are valued at the higher tariff rate proved by the Government at trial.

Under the provision proposed in H.R. 6394, it would be possible for the court to rule that a plaintiff should pay additional duties to the United States on the basis of the counterclaim asserted and proved by the United States. That provision would allow the counterclaim to be asserted not only with regard to the particular matter which gave rise to the civil action being litigated but also as to all other civil actions pending in the Court of International Trade involving import transactions by the same plaintiff.

Several witnesses strongly recommended the deletion of this provision from the legislation. They claimed that the counterclaim provision would permit the Government to exact additional duties from importers months after the importer has moved his goods into the stream of commerce at a price that accounts for the duties assessed by the Customs Service. These witnesses testified that the inclusion of the counterclaim provision fails to recognize the unique Customs Court practice known as the suspension process.²⁰

The Association of the Customs Bar summed up the position of a large segment of the private bar when it testified that the inclusion of the counterclaim provision "can only have a chilling effect on the com-

²⁰ The suspension of proceedings in a number of cases under a test case is one of the unique practices in customs litigation. This is due to the fact that the imported merchandise similar in all material respects to that in the test case may be involved in shipments to various importers and the same claims are made as to the valuation or classification of the goods. Because of the statute of limitations, importers file a protest and may commence a civil action as to all entries which have been liquidated or are liquidated during the pendency of the test case.

The suspension process is a method by which the court has avoided a multiplicity of trials. It provides that the other actions may be suspended pending a final decision in the test case. After a final decision in the test case, if the importer's claims are sustained, in whole or in part, the suspended actions are then submitted to the court on the basis of an agreed statement of facts. If the importer's claims are overruled, the suspended action is tried on its merits or abandoned.

The suspension procedure facilitates the disposition of actions, thereby eliminating the necessity of trying the same issue over and over. That also dispenses with the need to file complaints and answers in civil actions which in all likelihood will never be tried. The result being the conservation of judicial resources and a savings in litigation costs to private litigants and the Government.

mencement of litigation in the Court of International Trade.”²¹ The private bar’s concern rested fundamentally on the fact that the counterclaim provision would expose private litigants to uncertainty as to an importer’s ultimate liability, particularly when the Government files a counterclaim challenging a valuation that is not the subject of the complaint filed by the plaintiff. Other witnesses contended that the Government has ample opportunity prior to and after liquidation to reassess the initial valuation or classification and should not be accorded still another opportunity to collect a higher duty on goods long released into the stream of commerce, particularly after the Government’s rights under section 501 of the Tariff Act of 1930 have lapsed.

The American Importers Association (AIA) opposed the inclusion of the counterclaim provision, as it appeared in H.R. 6394. The Association did not believe that “permitting the Government to raise counterclaims on suspended cases, many of which will never come to trial . . . could promote judicial efficiency.”²² In light of that concern, AIA originally recommended that the provision be limited to “*the* import transaction that is the subject matter of *the* civil action before the Court.”²³ Subsequently, in response to a question from Congressman John Seiberling, AIA agreed that limiting the counterclaim to “the imported merchandise” would be a reasonable limitation.²⁴

The Department of Justice testified that the right to recover customs duties should apply equally to the importer and the Government. The Department stated that if the amount of duties due the Government is truly more than the actual assessment, then that amount should be paid. Assistant Secretary of the Treasury Richard J. Davis pointed out that the counterclaim provision would facilitate judicial economy and would not have an undue chilling effect. He indicated that there is nothing extraordinary about litigants and their lawyers having to balance the likely benefits of proposed litigation against the possibility of counterclaims.

On the one hand, by allowing some counterclaims involving the same importer which we do propose be done, you’re in the position of consolidating litigation, getting disputes between the same parties resolved more quickly. The fact that somebody has to consider whether they are subject to claims when they bring suit is the kind of judgment lawyers are called upon to make in a whole host of occasions when they have to advise clients whether it’s prudent or not prudent to come forward and bring litigation.²⁵

It is the Administration’s position that the Government should not be precluded from asserting a claim that would allow the court to make the proper determination and accordingly would enable the Government to collect the full amount of duties.

After extensive discussion the Subcommittee adopted an amendment limiting the Government’s counterclaim to “the imported merchandise.” This amendment strikes a compromise between the need of

²¹ Hearings, at 67.

²² Hearings, at 106.

²³ Hearings, at 97.

²⁴ Hearings, at 131.

²⁵ Hearings, at 71.

the Government to recover the proper amount of import duties and the exposure of the importer to additional liability. During the full Committee's consideration of H.R. 7540, an amendment to delete the provision from the bill was defeated.

Sections 1582(a)(2) and (a)(3), also added by section 201 of the bill, permit the United States to commence a civil action to recover on a bond relating to the importation of merchandise and to recover customs duties. The surety companies submitted written comments indicating that frequently there is no difference between actions to recover on a bond and actions to collect customs duties in that both actions are collection cases.

The terms of most customs bonds specify that the bond principal and the surety are jointly and severally liable to the United States. As introduced, H.R. 6394 did not permit the adjudication of the rights of all of the interested parties involved in an action arising under proposed sections 1582(a)(2) and 1582(a)(3). For example, if a surety desired to seek reimbursement from the bond principal for breach of contract, the surety would have to bring a separate civil action in State court or Federal district court.

The sureties stated that the administration of justice would be served best if the Court of International Trade was permitted to entertain cross-claims between the bond principal and the surety when both were named defendants in a section 1582(a)(2) or (a)(3) action. They also recommended that the court be given jurisdiction over third-party actions arising out of suits by the United States to recover on a bond or to recover customs duties. The inclusion of third-party action jurisdiction will protect both the bond principal and the surety when either is not named as a defendant in an action brought by the United States for recovery on a customs bond.²⁶ Under their recommendation the authorization for cross-claims and third-party actions would be included in proposed section 1583. The sureties strongly believed that these changes will allow the Court of International Trade to fully adjudicate the rights of all interested parties and to develop a uniform body of law, particularly with regard to liability on a customs bond.

Since the hearings, members of the private bar have concurred in the recommendations made by the surety companies. Although there was no formal ABA position, Leonard Lehman, Chairman of the ABA's Standing Committee on Customs Law, stated that:

Such a procedure would contribute to the effectiveness of the judicial process, since it would permit the Court of International Trade to dispose of all claims arising out of the same underlying transaction in the one proceeding which it must conduct in any event.²⁷

The Justice Department also saw the logic in the principle that when a surety is sued by the United States, the surety should be entitled to bring its principal into the suit.

²⁶ Letters from Wayne Jarvis of Wayne Jarvis, Ltd., to Leo M. Gordon, Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, "Customs Courts Act of 1980," Hearings, at 312-323.

²⁷ Letter from Leonard Lehman, Chairman, ABA Standing Committee on Customs Law, to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 203.

In addition, several witnesses suggested it would be wholly consistent with the underlying purposes for establishing cross-claim and third-party procedures, as well as the expansion of the Government's right to counterclaim, to permit private litigants to assert a counterclaim.

Accordingly, the Subcommittee further amended proposed section 1583 to authorize the assertion of any counterclaim, cross-claim or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject of a civil action before the court, or (2) such claim or action is to recover on a bond or customs duties relating to such merchandise.

The Committee also considered a provision setting forth the parties who would have standing to seek judicial review of any final determination of the Secretary of Labor certifying or refusing to certify workers, or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under the Trade Act of 1974.²⁸

The Subcommittee on Trade of the House Committee on Ways and Means reviewed this provision and in principle agreed that judicial review of adjustment assistance cases belongs in the Court of International Trade. They further agreed that firms and communities, as well as workers, should have standing to seek such review.

However, the Trade Subcommittee did not believe that judicial review should exist for determinations certifying workers, firms, and communities as eligible for adjustment assistance. As a matter of trade policy, existing law has not granted American importers or manufacturers, or foreign governments or manufacturers the right to challenge an administrative determination as to the eligibility of workers, firms or communities for adjustment assistance. Yet, under the literal reading of proposed section 2631(d), a foreign government or foreign manufacturer (and its American subsidiary) could have standing to challenge a certification for adjustment assistance as a person who is aggrieved by the final determination of the Secretary of Labor or the Secretary of Commerce. Accordingly, the Subcommittee on Trade recommended the deletion of the words "certifying or" in the relevant sections of H.R. 7540.

Many Members of the Judiciary Committee were sympathetic to the concerns of the Subcommittee on Trade regarding the standing of foreign governments and foreign manufacturers to challenge certifications of eligibility for adjustment assistance. However, the Judiciary Committee felt that there is a need to protect the rights of "interested domestic parties" who might be aggrieved by a final determination of the Secretary of Labor certifying workers or the Secretary of Commerce certifying firms or communities as eligible for adjustment assistance. As a result, the full Committee rejected an amendment to strike the words "certifying or" in the relevant provisions of H.R. 7540. Subsequently, the Committee adopted an amendment which added to proposed section 2631 a new subsection, subsection (d), defining those parties who have standing to challenge a final determination certifying or refusing to certify workers, firms, or communities as eligible for adjustment assistance. This amendment makes it

²⁸ See proposed section 1581(d), as contained in section 201 of Title II of H.R. 7540.

clear that standing to seek judicial review of adjustment assistance certifications does not extend to foreign governments or foreign business entities.

Under current law, an importer must commence a civil action in the United States Customs Court within 180 days after the mailing of a notice of denial of his protest by the Custom Services.²⁹ In no event may an importer commence a civil action before his notice of denial has been mailed.³⁰ Proposed section 2636(a)(2) in section 201 of H.R. 6394 attempted to extend the law by providing an importer with the right to institute a civil action within 180 days after the expiration of the two-year period for the mailing of such notice under section 515(a) of the Tariff Act of 1930.

The intent of this provision was to give importers additional protection of their rights where the Government failed to mail a notice of denial. The Department of Justice believed that the purpose of this provision "was to allow the importer to seek judicial review earlier than he now can if the Customs Service makes a mistake and fails to mail the notice."³¹ Representatives of the Justice and Treasury Departments emphatically stated that there is no "intent on the part of the Customs Service to stop mailing denial protests."³² In addition, this provision would protect the Government from an indefinite statute of limitations where no denial of a protest was mailed.

Representatives of the importers community strongly opposed the inclusion of this provision. They claimed that a large majority of importers do not know that a protest has been filed until they receive a notice of denial. Usually the protests are not filed by the importer of record but by a customhouse broker on behalf of the importer. According to one witness: "Not only will this impose a tremendous burden on importers or their agents in keeping track of thousands of protests and approve the denial to them of a written response to a protest, but can have the ultimate effect of turning the protests into a meaningless and patently dilatory procedure [on the part of the Customs Service]."³³

Proponents of the provision contended that customhouse brokers and importers should maintain business records in the same way as other businesses are required to do under other statutes, such as the securities and tax laws.

The Subcommittee carefully weighed the interests involved and chose to delete proposed section 2636(a)(2) from section 301 of H.R. 6394 because of the significant burdens it would place on importers. During the full Committee mark-up, Congressman Harold Volkmer offered an amendment to insert a similar provision into proposed section 2636 in section 301 of H.R. 7540. That amendment was defeated by the full Committee.

During its hearings, the Subcommittee received testimony on proposed section 2639(b) in section 301 of H.R. 6394, regarding the introduction of evidence of affidavits and depositions of persons whose appearance as witnesses, particularly foreign manufacturers,

²⁹ 28 U.S.C. § 2631(a).

³⁰ *Knickerbocker Liquors Corp. v. United States*, 78 Cust. Ct. 192, 432 F. Supp. 1347 (1977).

³¹ Hearings, at 77.

³² *Ibid.*

³³ Hearings, at 189.

could not reasonably be had at trial. Existing law permits such evidence to be introduced in a civil action in the Customs Court where the value of imported merchandise is in issue.

The ABA recommended that this proposed section be extended to include instances where the value of imported merchandise "or any of its components" is in issue in a civil action before the United States Court of International Trade. The National Customs Brokers & Forwarders Association concurred with the ABA's recommendation. Both groups contended that the "components" language was necessary because court litigation frequently involved the value of a component part or the component material constituting the chief value of the imported merchandise. They believed that the ultimate determination pertaining to the imported merchandise greatly depended on this factor. Thus, in an effort to remove any ambiguity as to whether depositions or affidavits regarding the component's value may be admitted into evidence, the witnesses urged the inclusion of the "components" language. They believed that its inclusion would reduce litigation costs for importer-plaintiffs.

The Justice Department opposed the inclusion of the "components" language urging that it would be unable to rebut such evidence. The Department currently labors under that hardship with regard to the value of the imported merchandise itself. It believed that the extension of this rule to components is unwarranted in light of the difficulty in acquiring production costs from foreign manufacturers. Justice argued that if a plaintiff was compelled to have a foreign manufacturer appear as a witness at trial, at least the Court of International Trade would have an opportunity to judge the demeanor and credibility of the witness.

At its mark-up, the Monopolies Subcommittee adopted an amendment authorizing the use of deposition and affidavit evidence where the value of imported merchandise "or any of its components" is in issue in a civil action before the Court of International Trade.

As originally drafted, section 301 of H.R. 6394 also would have added proposed section 2643(b) authorizing the Court of International Trade to remand civil actions commenced under sections 515 and 516 of the Tariff Act of 1930. Several witnesses commented that in light of other language contained in proposed section 2643, that is "orders of remand", the court's authority under this provision could be read as a limitation for use only in 515 and 516 civil actions rather than as an express authorization for use in other cases.

In the opinion of the Justice Department "the authority to remand . . . should be broadened to include situations other than those mentioned in that section."³⁴ The Department stated that this point might need some clarification.

Both Judge Re, Chief Judge of the Customs Court, and Judge Markey, Chief Judge of the Court of Customs and Patent Appeals, strongly endorsed the concept that the remand power of the Court of International Trade should be co-extensive with that of a federal district court. Such a concept also met with the approval of the Administrative Conference of the United States. The Conference stated that its primary:

³⁴ Cohen letter, *supra* note 19, at 79.

focus with respect to remand authority was that it be available in proceedings commenced pursuant to sections 515 and 516, where it is currently available. Since H.R. 6394 would give the Court exclusive jurisdiction over other types of cases as well, it would seem logical to permit the Court to remand other actions as well.³⁵

In response to the concern raised about proposed section 2643(b), the Subcommittee adopted an amendment clarifying and expanding the remand power of the Court of International Trade by making it applicable to "any civil action."

The authorization for the Court of International Trade to issue preliminary or permanent injunctive relief is one of the major accomplishments of the Customs Courts Act of 1980. All of the witnesses strongly endorsed the inclusion of this provision in the legislation.

As introduced, section 301 contained proposed section 2643(c)(1), delineating certain requirements that had to be fulfilled prior to the issuance of a preliminary or permanent injunction. Several witnesses indicated that injunctive relief should not be available until all administrative remedies have been exhausted. However, one witness stated that the exhaustion language contained in proposed section 2643(c)(1) was probably unnecessary in light of the general rule on the exhaustion of administrative remedies set forth in proposed section 2637.³⁶ After reviewing this provision, the Subcommittee decided to delete the exhaustion language.

The Subcommittee also adopted an amendment to proposed section 2643(c)(1) clarifying the basis upon which the Court of International Trade may grant a motion for a preliminary or permanent injunction. The amendment adopts a recommendation of the Department of Commerce to delete language that would have enumerated standards for issuance of a preliminary or permanent injunction, thereby allowing the court to apply the same standards as those employed by the district courts.³⁷

During the hearings, a member of the private bar urged that the Government pay an importer interest on a refund of excess customs duties because the time between the payment of customs duties and the date of the refund pursuant to a court judgment may be as long as four or five years. The Association of the Customs Bar felt it would be desirable to have interest awarded since "the importer must have paid all assessed duties before he can commence an action in the Court of International Trade."³⁸

The Department of the Treasury calculated the cost of an authorization for the awarding of interest, based on a rate of 10 percent per annum, to be \$1.6 million on refunds of \$6.1 million. The time period for this calculation ran from the date of filing of the sum-

³⁵ Letter from Richard K. Berg, Executive Secretary, Administrative Conference of the United States, to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 255.

³⁶ Jarvis letter (Feb. 19, 1980) *supra* note 26, at 315.

³⁷ Letter from Homer E. Moyer, Jr., General Counsel of the United States Department of Commerce, to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 310.

³⁸ Letter from Andrew P. Vance, on behalf of the Association of the Customs Bar, to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 212.

mons to the date of judgment. Treasury estimated that the cost of awarding interest increased approximately \$52,000 for each additional month tacked onto the award period.³⁹

A number of members of the private bar suggested that the award of interest be keyed from the date of filing of the summons to the date of the refund. They believed that such a period would fully compensate an importer for his economic loss.⁴⁰ The Department of Justice did not oppose the awarding of interest, but was concerned that an importer-plaintiff could file a summons and leave the action in the suspension file for a lengthy period, thereby extending the interest period before activating the action by the filing of the complaint. In light of this, the Department urged that the interest award be calculated from the date of filing of the complaint.

The Subcommittee was persuaded by the concerns of the private bar and adopted an amendment authorizing the Court of International Trade to award interest on a refund of excess customs duties to an importer-plaintiff calculated from the date the summons is filed until the date of the refund.

The Committee also amended the effective date provision of H.R. 6394. As introduced, section 701 provided that the Customs Courts Act of 1980 would be effective retroactively to January 1, 1980.

After concerns were raised about the retroactive effective date, the Subcommittee requested all of its witnesses to review a phased effective date proposal submitted by the Department of Justice.⁴¹ There was general agreement that a three-tiered effective date approach adequately allayed all concerns: those provisions which restated current law to be effective on the date of enactment; those provisions which created new jurisdiction for the Court of International Trade to be effective for all civil actions commenced after the date of enactment; and those provisions relating to civil penalty and collection actions commenced by the United States to be effective as to civil actions commenced after the 90th day after the date of enactment.

Accordingly, the Subcommittee adopted an amendment reflecting the Department of Justice's recommendation.

The Committee on the Judiciary urges the full House to give prompt and favorable consideration to H.R. 7540, the Customs Courts Act of 1980.

IV. PROVISIONS

TITLE I—COMPOSITION OF THE COURT OF INTERNATIONAL TRADE AND ASSIGNMENT OF JUDGES TO OTHER COURTS

Section 101

Section 101 amends the present statutory provision, 28 U.S.C. § 251, relating to the designation of the Chief Judge of the United States Customs Court and the appointment of judges to that court. It is the intent of this section to change the name of the United States

³⁹ Letter from Richard H. Abbey, Chief Counsel, United States Customs Service, Department of the Treasury, to Chairman Peter W. Rodino, Jr., "Customs Courts Act of 1980," Hearings, at 88-90.

⁴⁰ See, e.g., Hearings, at 129.

⁴¹ Letter from David M. Cohen, Director, Commercial Litigation Branch, Civil Division, Department of Justice, to Leo M. Gordon, Counsel, Subcommittee on Monopolies and Commercial Law, Committee on the Judiciary, "Customs Courts Act of 1980," Hearings, at 85-87.

Customs Court to the United States Court of International Trade and to clarify the Article III status of the court.

Current law provides that no more than five judges of the United States Customs Court shall be members of the same political party. Section 101 restates that portion of subsection (a) of section 251 which declares that the court is established under Article III of the Constitution. In addition, section 101 amends section 251(a) to provide that the Court of International Trade shall consist of nine judges and removes the provision establishing a mandatory political affiliation requirement for persons appointed to the court. The Committee found the political affiliation requirement to be inappropriate for an Article III court.

Current law also provides that "the President shall designate from time to time one of the judges [of the Customs Court] to act as Chief Judge." Section 101 also amends subsection (b) of section 251 to authorize the President to designate one of the judges to serve as Chief Judge of the Court of International Trade. Such individual is to serve as chief judge until he reaches 70 years of age. This provision is similar to the provision limiting the age of the chief judge of a district court in a district containing more than one judge.⁴²

Furthermore, section 101 amends subsection (c) of section 251 to provide that the principal offices of the Court of International Trade will be located in New York, New York. The amendment is a technical clarification, since the offices of the Customs Court's predecessor, the Board of General Appraisers, were located at one time at the Port of New York.

Section 102

Under present statutes, a district court judge may sit by designation as a judge of a United States court of appeals or as a judge of the Court of Claims or the Court of Customs and Patent Appeals.⁴³

An active judge of the United States Customs Court may sit by designation as a district court judge or as a judge of the Court of Customs and Patent Appeals. Although a senior judge of the Customs Court may also serve by designation as a judge in the United States court of appeals or the Court of Claims, an active judge cannot do so.

Section 102 amends sections 293(b) and 293(d) of Title 28, United States Code, to remove this anomaly and permit an active judge of the Court of International Trade to serve as a judge of the Court of Claims or a United States court of appeals under the same circumstances that allow a district court judge to sit by designation.

TITLE II—JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

Section 201

Section 201 repeals the current statutes relating to the jurisdiction of the United States Customs Court now contained in Chapter 95, Title 28, United States Code and substitutes for those provisions five new sections which define the jurisdiction and powers of the new Court of International Trade.

⁴² See 28 U.S.C. § 136(a).

⁴³ 28 U.S.C. § 292.

Section 1581

Proposed section 1581 contains the major jurisdictional grants of authority to the Court of International Trade.

Subsection (a) provides that the court will have exclusive jurisdiction over any civil action commenced to contest the denial of an administrative protest, in whole or in part, brought pursuant to section 515 of the Tariff Act of 1930 (19 U.S.C. § 1515). This section is intended to permit the Court of International Trade to review a denial of a section 515 protest that relates to any matter listed in section 514 of the Tariff Act of 1930. This new subsection substantially restates the courts' authority as presently set forth in 28 U.S.C. § 1582(a). However, section 605(a) of this bill would expand the court's jurisdiction to review the denial of a section 515 protest pertaining to a demand for redelivery of imported merchandise, as provided for in section 514, as amended by this bill.⁴⁴

Under the Customs Courts Act of 1980, the filing and denial of a protest will continue as prerequisites to the commencement of a civil action brought pursuant to proposed section 1581(a). The bill also will continue to require the payment of all liquidated duties, charges or exactions, before a civil action can be commenced, except under the limited circumstances of proposed section 2643(c)(1) or as provided in proposed section 1581(h). In addition, the bill preserves the right to a trial *de novo* for the review of a denial of a protest.

It is the intent of the Committee that importers and their sureties not utilize proposed section 1581(a) to circumvent the exclusive method of judicial review of an antidumping and countervailing duty determination listed in section 516A of the Tariff Act of 1930 (19 U.S.C. § 1516a), as provided in that section. Section 516A of the Tariff Act of 1930 was added to that Act by the Trade Agreements Act of 1979. The 1979 Act revised the antidumping and countervailing statutes so as to provide *inter alia*, that each year the administering authority must publish a statement of the proposed antidumping or countervailing duty to be assessed upon all merchandise covered by an antidumping or countervailing duty order and which entered the United States during the preceding year. Section 516A of the Tariff Act of 1930 provides that an importer must challenge the assessment or the amount of the antidumping or countervailing duty to be imposed at the time of the annual publication. An importer may not await the actual assessment of the duty, file a protest, and upon denial of the protest file a civil action in the Court of International Trade under proposed section 1581(a). Rather, the Committee intends that such actions be commenced pursuant to the statutes governing the commencement of a civil action to review the determinations listed in section 516A of the Tariff Act of 1930.

Subsection (b) of proposed section 1581 is a restatement of existing law, as set forth in 28 U.S.C. § 1582(b). This subsection grants the Court of International Trade exclusive jurisdiction over any civil action commenced by an American manufacturer under section 516 of the Tariff Act of 1930 (19 U.S.C. § 1516) seeking review of administrative determinations regarding imported merchandise. The current

⁴⁴ For a detailed explanation of the expansion of section 514 of the Tariff Act of 1930, see section 604(a) of the provisions section of this report.

prerequisites for the commencement of a civil action are preserved by this legislation, as is the right to a trial *de novo*.⁴⁵

Subsection (c) of proposed section 1581 is a restatement of the law as it currently exists in 28 U.S.C. 1582(b). This subsection grants the Court of International Trade exclusive jurisdiction over civil actions commenced to review those antidumping and countervailing duty determinations listed in section 516A of the Tariff Act of 1930. The court's jurisdiction over such actions was added by Title X of the Trade Agreements Act of 1979. As with the case of 515 and 516 civil actions, this legislation preserves most of the current statutory prerequisites governing section 516A civil actions.⁴⁶

Subsection (d) of proposed section 1581 is a new jurisdictional grant of authority to the Court of International Trade. The first portion of subsection (d) transfers exclusive jurisdiction to review a final determination of the Secretary of Labor refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974 from the United States courts of appeals to the Court of International Trade.⁴⁷

Subsection (d) also expands the court's jurisdiction in two significant ways. First, this subsection provides the Court of International Trade with exclusive jurisdiction to judicially review a final determination by the Secretary of Commerce refusing to certify firms or communities as eligible for adjustment assistance under the Trade Act of 1974. Under that Act there is no specific provision for the judicial review of such determinations.⁴⁸

It is the Committee's intention to provide for such review in light of the policy underlying the Trade Agreements Act of 1979 and this bill, said policy being that "[p]ersons adversely affected or aggrieved by agency actions arising out of import transactions are entitled to the same access to judicial review and judicial remedies as Congress has made available for persons aggrieved by actions of other agencies."⁴⁹ In keeping with this policy, the Committee has expanded the court's jurisdiction into a second area. The Trade Act of 1974 only provides for judicial review of refusals to certify. Yet, the Committee believes it is necessary to extend the right of judicial review to a final determination of the Secretary of Labor to certify workers or the Secretary of Commerce to certify firms or communities as eligible for adjustment assistance. In this way, the Committee seeks to fully protect the rights of persons who are aggrieved by an agency action regarding certification of eligibility for adjustment assistance.

Subsection (e) of proposed section 1581 is a clarification of the jurisdiction of the court. Title X of the Trade Agreements Act of 1979 granted the court exclusive jurisdiction to review certain final determinations regarding rules of origin for purposes of administering Title III of the Trade Agreements Act, which implements the Government Procurement Code. Subsection (e) merely restates this grant of authority.

⁴⁵ See, e.g., proposed sections 2631(b), 2632(b), 2636(b), 2637(b), 2639(a)(1), 2639(c) and 2640(a)(2), as contained in section 301 of Title III of this bill.

⁴⁶ See, e.g., proposed sections 2631(c), 2632(c), 2636(c), and 2640(b), as contained in section 301 of Title III of this bill.

⁴⁷ Current jurisdiction for this type of case lies in section 250 of the Trade Act of 1974 (19 U.S.C. § 2322).

⁴⁸ See sections 251 and 271 of the Trade Act of 1974 (19 U.S.C. §§ 2341 and 2371).

⁴⁹ Hearings, at 24.

Subsection (f) of proposed section 1581 is also a clarification of provisions established by the Trade Agreements Act of 1979. Title X of that Act granted exclusive jurisdiction to the court to hear applications pursuant to section 777(c)(2) of the Tariff Act of 1930 (19 U.S.C. 1677(c)(2)) for refusals to disclose confidential information received by the administering authority or the International Trade Commission during the course of an antidumping or countervailing duty investigation. Subsection (f) restates that grant of jurisdiction.

Subsection (g) of proposed section 1581 grants new jurisdiction to the Court of International Trade. Under subsection (g), the court would review any decision of the Secretary of the Treasury denying or revoking a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or revoking or suspending a customhouse broker's license under section 641(b) of that Act. Section 641 of the Tariff Act of 1930 provides that judicial review of the Secretary's decision lies with the United States courts of appeals. In keeping with the underlying policy of this legislation to establish a uniformity of jurisdiction of civil actions involving the tariff and international trade laws, the Committee believes it is appropriate to repose jurisdiction over these cases in the Court of International Trade. This transfer of jurisdiction in no way diminishes the protection of the rights of the affected customhouse broker or the Government.

Subsection (h) of proposed section 1581 is also a new grant of subject matter jurisdiction to the Court of International Trade. It provides that the court may review, "prior to the importation of the goods involved," a ruling or a refusal to issue or change a ruling by the Secretary of the Treasury regarding such issues as the classification, valuation, or rate of duty of those goods. At present, judicial review of a ruling can be obtained only by completing an import transaction in accordance with the ruling and then proceeding to obtain judicial review in the usual manner, that is filing a protest, paying the duties and contesting the denial of the protest.

The Committee recognizes that in certain instances a person can be injured if he is unable to obtain judicial review of a ruling by the Secretary of the Treasury unless and until the contemplated transaction is completed, the duties are paid and a suit is commenced in the Customs Court. Thus, it may be appropriate in limited circumstances to permit judicial review prior to the completion of the transaction or payment of the duties. Many of the witnesses who testified before the Subcommittee agreed, including the Departments of Justice and the Treasury.

The time-honored rule is that the court does not possess jurisdiction to review a ruling or a refusal to issue or change a ruling by the Secretary of the Treasury unless it relates to a subject matter presently within the jurisdiction of the United States Customs Court, for example, an action brought pursuant to section 515 of the Tariff Act of 1930. The Committee intends a very narrow and limited exception to that rule. The word "ruling" is defined to apply to a determination by the Secretary of the Treasury as to the manner in which it will treat the contemplated transaction. In determining the scope of the definition of a "ruling," the Committee does not intend to include "internal advice" or a request for "further review", both of which relate to completed import transactions.

It is not the Committee's intent to permit judicial review prior to the completion of the import transaction in such a manner as to negate the traditional method of obtaining judicial review of import transactions. Many individuals will, of course, desire to obtain judicial review without the payment of duties. Such review, however, is exceptional and is authorized only when the requirements of subsection (h) are met.

Subsection (i) of proposed section 1581 is a residual grant of jurisdictional authority. This provision expands the exclusive jurisdiction of the Court of International Trade to include those civil actions "against the United States, its agencies, or its officers, that arise out of any law of the United States providing for—

- (1) revenue from imports or tonnage;
- (2) tariffs, duties, fees or other taxes on the importation of merchandise for reasons other than the raising of revenue;
- (3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or
- (4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section."

Subsection (i) is intended only to confer subject matter jurisdiction upon the court, and not to create any new causes of action not founded on other provisions of law.

The purpose of this broad jurisdictional grant is to eliminate the confusion which currently exists as to the demarcation between the jurisdiction of the district courts and the Court of International Trade. This provision makes it clear that all suits of the type specified are properly commenced only in the Court of International Trade. The Committee has included this provision in the legislation to eliminate much of the difficulty experienced by international trade litigants who in the past commenced suits in the district courts only to have those suits dismissed for want of subject matter jurisdiction. The grant of jurisdiction in subsection (i) will ensure that these suits will be heard on their merits.

Some witnesses expressed concern over the breadth of subsection (i) in its introduced form.⁵⁰ The American Importers Association (AIA) testified that subsection (i) could have been interpreted to permit the court to assert jurisdiction over civil actions involving the application of the Federal Food, Drug and Cosmetics Act or the Toxic Substances Control Act to imported merchandise. AIA believed that these actions do not involve questions of classification, valuation or rate of duty but rather questions of public health and safety. As such, it was AIA's

⁵⁰ Proposed section 1581 (i), as contained in section 201(a) of H.R. 6394 read as follows:

"(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a) through (h) of this section and subject to the exceptions set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action against the United States, its agencies, or its officers, which—

- (1) arises directly from an import transaction; and
- (2) (A) involves the Tariff Act of 1930, the Trade Expansion Act of 1962, the Trade Act of 1974, or the Trade Agreements Act of 1979; or
- (B) involves a provision of—
 - (i) the Constitution of the United States;
 - (ii) a treaty of the United States;
 - (iii) an executive agreement executed by the President; or
 - (iv) an Executive order of the President, which directly and substantially involves international trade."

position that those questions should be treated the same whether a court is dealing with domestic or imported goods and more appropriately should come within the jurisdiction of the district courts.

In keeping with the intent of the Customs Courts Act of 1980 to provide a uniformity of jurisdiction, the Committee adopted a more precise subsection (i) in an effort to remove any confusion over the jurisdiction of the Court of International Trade regarding this or similar issues.⁵¹

As in the case of subsection (a) of proposed section 1581, it is the intent of the Committee that the Court of International Trade not permit subsection (i), and in particular paragraph (4), to be utilized to circumvent the exclusive method of judicial review of those antidumping and countervailing duty determinations listed in section 516A of the Tariff Act of 1930 (19 U.S.C. § 1516a), as provided in that section. Since subsection (i) merely confers jurisdiction on the court and does not create any new causes of action, H.R. 7540 does not change the rights of judicial review which exist under section 516A.

The Committee intends that any determination specified in section 516A of the Tariff Act of 1930, or any preliminary administrative action which, in the course of proceeding, will be, directly or by implication, incorporated in or superceded by any such determination, is reviewable exclusively as provided in section 516A. For example, a preliminary affirmative antidumping or countervailing duty determination or a decision to exclude a particular exporter from an antidumping investigation would be reviewable, if at all, only in connection with the review of the final determination by the administering authority or the ITC.

However, subsection (i), and in particular paragraph (4), makes it clear that the court is not prohibited from entertaining a civil action relating to an antidumping or countervailing duty proceeding so long as the action does not involve a challenge to a determination specified in section 516A of the Tariff Act of 1930.

Subsection (j) of proposed section 1581 is a limitation on the broad grant of jurisdiction provided for in subsections (a)-(i) of this section.

Subsection (j) provides that the Court of International Trade shall not have jurisdiction over civil actions arising under section 305 of the Tariff Act of 1930 (19 U.S.C. § 1305), regarding the importation of obscene or seditious materials into the United States. Jurisdiction over such actions will remain with the federal district courts. This provision restates existing law, 19 U.S.C. § 1305.

Section 1582

Proposed section 1582 grants the Court of International Trade new and exclusive jurisdiction over any civil action arising out of an import transaction and commenced by the United States to: (1) recover a civil fine or penalty or to enforce a forfeiture imposed under section 592 or section 704(i)(2) or section 734(i)(2) of the Tariff Act of 1930; or (2) to recover on a bond relating to the importation of merchandise; or (3) to recover customs duties.

⁵¹ See proposed section 1581(i)(3), as contained in section 201 of Title II of this bill. Subsection (i)(3) reads as follows:

"(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety." (Emphasis added.)

Jurisdiction over this type of civil action presently lies in the federal district courts. However, since each of these actions present questions which involve the expertise of the court, e.g. questions concerning classification, valuation or markings, the Committee believes exclusive jurisdiction over these actions should lie in the United States Court of International Trade.

Paragraphs (2) and (3) of proposed section 1582 provide jurisdiction for the Court of International Trade to hear collections cases, i.e. recoveries on a bond or recoveries of customs duties. The Committee intends that these actions proceed in the same manner as they have in the district courts.

The Committee does not intend for importers to withhold payment of their assessed duties and then await suit by the Government in order to challenge the underlying administrative decision by the Customs official as to classification or valuation through the use of a counterclaim pursuant to proposed section 1583. Under H.R. 7540, the filing and denial of a protest will continue to be prerequisites to the commencement of a civil action traditionally brought by an importer, as will the payment of all liquidated duties, charges or exactions, except as provided by this legislation. The bill is not intended to make a major change in the requirement that an importer exhaust all administrative remedies prior to the commencement of a civil action in the Court of International Trade, except as provided for by proposed section 2637(c).

Section 1583

Proposed section 1583 grants the Court of International Trade jurisdiction over counterclaims, cross-claims and third-party actions filed by any party in a civil action before the court. The proposed section allows a counterclaim, cross-claim, or third-party action to be asserted if it involves the imported merchandise which is the subject matter of the civil action before the court.

Proposed section 1583 will have a significant effect on cases involving an administrative determination respecting imported merchandise, particularly valuation cases, in that under current law the Customs Court does not have authority to entertain counterclaims. Presently, when an importer-plaintiff challenges an administrative determination in the Customs Court, the burden is placed upon him to demonstrate both that such determination is erroneous and to establish the proper determination. The United States may defend a valuation action either by claiming that the original valuation was correct or by asserting in the alternative that, if the original valuation was incorrect, the goods should be valued in a way different from that claimed by the plaintiff. At present, if the plaintiff is able to demonstrate that the original valuation was erroneous, but the United States demonstrates that the goods should have been valued in a manner different than that claimed by the plaintiff, the Customs Court dismisses the action without requiring the plaintiff to pay any additional duties. Under proposed section 1583, the court, in such case, will have the authority to order the plaintiff to pay additional duties if the United States establishes its counterclaim.

Under current law the Customs Court also lacks authority to entertain cross-claims or third-party actions. Granting the court jurisdiction

tion over these claims or actions is a necessary concomitant to the court's jurisdiction pursuant to proposed section 1582. The Committee believes that the inclusion of cross-claims and third-party actions will permit the Court of International Trade to adjudicate the rights of all affected parties to an international trade civil action. In this way, the Committee is promoting judicial economy and assuring uniformity in the judicial decisionmaking process.

Section 1584

Proposed section 1584 is a procedural provision which will allow courts to correct defects in jurisdiction.

Subsection (a) permits the transfer of cases from a district court to the Court of International Trade when the district court determines that the action should have been commenced in the Court of International Trade in the first instance.

Subsection (b) provides for the transfer of cases from the Court of International Trade to a federal district court, a United States court of appeals, or the Court of Appeals for International Trade, Patents and Trademarks, when it determines that the case should have been filed in such court in the first instance.

Section 1585

Proposed section 1585 provides that the Court of International Trade shall possess all the powers in law and equity of, or conferred by statute upon, a district court. In the past, there has been some doubt as to whether or not the Customs Court possessed this full judicial authority. It is the Committee's intent to make clear that the Customs Court's successor, the United States Court of International Trade, does possess the same plenary powers as a federal court district court.

TITLE III—COURT OF INTERNATIONAL TRADE COURT PROCEDURE

Section 301

Section 301 strikes the current provisions of Chapter 169 of Title 28, United States Code and substitutes new provisions governing procedures in the Court of International Trade. In many instances, section 301 restates existing law but reorganizes the manner in which it is set forth.

Section 2631

Proposed section 2631 contains the operative standing provisions governing commencement of a civil action in the Court of International Trade.

Subsection (a) largely restates existing law. This subsection provides that a civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced by the person who filed such protest pursuant to section 514 of the Act. In addition, subsection (a) provides standing for the surety on the transaction that is the subject of the administrative protest pursuant to section 514 of the Tariff Act of 1930.

Subsection (b) clarifies existing law as to the eligibility of parties to seek judicial review of the denial of a petition under section 516 of the Tariff Act of 1930. This subsection provides that a civil action

commenced to contest the denial of such petition may be commenced by the person who filed the petition.

Subsection (c) restates the existing language of section 516A of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979. This subsection provides that a civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced by any interested party who was a party to the administrative proceeding sought to be reviewed.⁵²

Subsection (d) establishes the standing requirements for commencement of a civil action seeking review of a final determination of the Secretary of Labor certifying or refusing to certify workers, or the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under the Trade Act of 1974. This provision expands the class of persons entitled to seek judicial review of such determination to include firms and communities, as well as workers.⁵³ In keeping with the expansion of the right of judicial review set forth in proposed section 1581(d), this subsection accords standing to workers, firms, or communities aggrieved by an administrative determination certifying or refusing to certify such workers, firms, or communities as eligible for adjustment assistance.

In addition, subsection (d) of this section creates standing for those interested domestic parties who are aggrieved by such administrative determinations, particularly a certification determination. The Committee intends that domestic parties, other than those aggrieved by the determination of the Secretary of Labor or the Secretary of Commerce, shall have the right to seek judicial review of such determination. The phrase "interested domestic party" eliminates standing for any foreign government or subdivision thereof, any foreign business entity or foreign persons who may desire to judicially challenge a determination certifying or refusing to certify. The Committee intends that the term be accorded a definition different than that of "domestic interested party", as used in the Trade Agreements Act of 1979.

Subsection (e) restates the standing provision contained in the Trade Agreements Act of 1979. This subsection provides that a civil action to review a final determination under section 305(b) (1) of that act may be commenced by a party-at-interest with respect to the determination.⁵⁴

Subsection (f) restates the standing provision contained in the Trade Agreements Act of 1979. This subsection provides that a civil action involving an application for the disclosure of confidential information by the administering authority or the ITC under section 777(c) (2) of the Tariff Act of 1930 may be commenced by any interested party whose application for disclosure of such information was denied pursuant to section 777(c) (1) of that Act.

⁵² The term "interested party" is defined in proposed section 2631(k), as contained in section 301 of Title III of this bill, and is to be accorded the same definition as set forth in section 771(a) of the Tariff Act of 1930 (19 U.S.C. § 1677).

⁵³ Standing for workers under this section is identical to that under section 250 of the Trade Act of 1974, i.e., "a worker, group of workers, certified or recognized union, or an authorized representative of such worker or group."

Standing for firms under this section is identical to that under section 251 of the Trade Act of 1974, i.e., "a firm or its representative."

Standing for communities under this section is identical to that under section 271 of the Trade Act of 1974, i.e., "a political subdivision of a State (hereinafter in this part referred to as a 'community'), by a group of such communities, or by the Governor of a State on behalf of such communities."

⁵⁴ The definition of a "party-at-interest" is found in proposed section 2631(k), as contained in section 301 of Title III of this bill.

Subsection (g) is a new standing provision corresponding to the court's grant of authority to review decisions by the Secretary of the Treasury regarding the denial, revocation or suspension of a custom-house broker's license.⁵⁵ Subsection (g) (1) provides standing to the person whose license was denied or revoked under section 641(a) of the Tariff Act of 1930. Subsection (g) (2) provides standing to the person whose license was revoked or suspended under section 641(b) of that Act. Subsection (g) does not alter the standing requirements for these actions as they exist under current law.

Subsection (h) is a new standing provision corresponding to the court's grant of authority in proposed section 1581(h) to review rulings by the Secretary of the Treasury or a refusal by the Secretary to issue or change a ruling prior to the importation of goods into the United States. Standing under this subsection is limited to those persons who would have standing to sue under proposed section 1581(a), that is an importer, had the contemplated import transaction taken place. The Committee believes that a narrow standing provision is appropriate in this instance because the importer is the party directly affected by the ruling of the Secretary or his refusal to issue or change a ruling. Furthermore, the Committee believes that the rights of others, such as American manufacturers, are adequately protected under the tariff and international trade laws once the importation actually takes place.

Subsection (i) is a new provision which states that a civil action other than one specified in subsections (a)-(h) of this section may be commenced by a person adversely affected or aggrieved by a Government agency action within the meaning of 5 U.S.C. § 702. This subsection is intended to correlate with and complement the broad grant of residual jurisdiction found in proposed section 1581(i).

Subsection (j) sets forth the requirements governing intervention in civil actions before the Court of International Trade. Subsection (j) (1) provides that "any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International Trade, may, by leave of course, intervene in such action."

There are, however, three exceptions to this rule. First, no intervention is permissible in a civil action brought pursuant to section 515 or 516 of the Tariff Act of 1930. Second, in a civil action pursuant to section 516A of that Act, only an interested party who was a party to the administrative proceeding may intervene, and such intervention is a matter of right. Third, in a civil action pursuant to section 777(c) (2) of that Act only a person who was a party to the administrative investigation may intervene, and such intervention is a matter of right. Thus, in a section 777(c) (2) action a person who was not a party to the investigation in which the confidential information was received may not intervene.

Subsection (j) (2) provides that in those civil actions where intervention is by leave of court, the court in exercising its discretion shall consider whether the intervention will unduly delay the proceedings or prejudice the adjudication of the rights of the original parties. This parallels the existing law governing permissive intervention in the district courts.

⁵⁵ The court's jurisdiction over these cases is found in proposed section 1581(g), as contained in section 201 of Title II of this bill.

Subsection (k) sets forth the definitions of "interested party" and "party-at-interest" that are to be used in interpreting those phrases within the context of the relevant subsections of this section. These definitions are a restatement of those contained in the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979.

Section 2632

Section 2632 sets forth the requirements governing the commencement of a civil action in the Court of International Trade.

Subsection (a) states the general rule. It requires that civil actions, except those provided for in subsections (b) and (c), be commenced by filing concurrently a summons and complaint with the clerk of the court.

Subsection (b) requires a civil action under section 515 or section 516 of the Tariff Act of 1930 be commenced by filing a summons with the clerk of the court. This subsection restates existing law with respect to those actions.

Subsection (c) sets forth the second exception to the general rule. It requires that a civil action commenced pursuant to section 516A of the Tariff Act of 1930 be initiated by filing a summons, or a summons and complaint, as prescribed by such section. Under section 516A(a)(1), as amended by section 608 of this bill, an action is commenced by filing concurrently a summons and complaint. In contrast under section 516A(a)(2) an action is commenced by filing only a summons and then a complaint is required 30 days thereafter.

Subsection (d) is concerned with the filing of papers in the Court of International Trade. Since the court possesses nationwide jurisdiction, parties located in distant cities may face a disadvantage because of the potential delays involved when filing by mail. Therefore, subsection (d) of proposed section 2632 permits the court to provide by rule that the filing of papers shall be deemed to take place on the date of mailing rather than the date of receipt as long as the specified method of mailing is utilized. In light of this authorization, the Committee anticipates that the Court of International Trade will retain Rule 3.2 (b) of the Rules of the United States Customs Court.

Section 2633

Proposed section 2633 establishes certain requirements respecting filing fees, the form of pleadings and service of official papers.

Subsection (a) restates existing law as found in 28 U.S.C. § 2632(b). This subsection provides for the payment of a filing fee upon the commencement of an action in the Court of International Trade. The fee is to be prescribed by the rules of the court and is to be at least \$5 but not more than that charged by district courts. The subsection also authorizes the court to fix all other fees to be charged by the clerk.

Subsection (b) authorizes the Court of International Trade to prescribe rules governing the summons, pleadings and other official papers and for the consolidation, severance and suspension of cases. This subsection is a restatement of existing law set forth in 28 U.S.C. § 2632(c).

Subsection (c) prescribes the manner for the service of official papers. This subsection requires all papers to be served on all parties. When the United States Government is a party, the Attorney General and the head of the agency involved are to be served. This restates the

existing law set forth in 28 U.S.C. § 2632(e). The proposed subsection also adds a new provision regarding the service of papers when injunctive relief is sought. In that case, service of papers shall also be made upon the named official to be enjoined.

Section 2634

Proposed section 2634 requires that all parties to a civil action before the Court of International Trade be given reasonable notice of the time and place of the trial or hearing. This section restates existing law as found in 28 U.S.C. § 2634.

Section 2635

Proposed section 2635 is concerned with the filing of official documents.

Subsection (a) is a substantial restatement of existing law as found in 28 U.S.C. § 2632(f). Subsection (a) (1) lists the official documents that must be filed by the Secretary of the Treasury with the clerk of the court as part of the official record in a civil action commenced under section 515 or 513 of the Tariff Act of 1930. These documents are to be transmitted to the clerk as soon as possible after service of the summons on the Secretary. This subsection also permits the court to prescribe rules for the transmittal of the record.

Subsection (a) (2) provides that if any of the documents required to be filed under subsection (a) (1) do not exist, then an affirmative statement to that effect must be transmitted to the clerk of the court.

Subsection (b) (1) provides for the filing of the official record with the clerk of the court in civil actions commenced under section 516A of the Tariff Act of 1930 within forty days after service of the complaint upon the administering authority or the International Trade Commission, or within such period of time as the Court of International Trade may specify.⁵⁶

Subsection (b) (1) also permits the court to prescribe rules for the transmittal of the record. This provision authorizes the court to permit, among other things, the filing of a certified index of the record by the administering authority or the Commission in lieu of the entire administrative record.

Subsection (b) (2) sets forth the manner in which alleged confidential or privileged material contained in the official record is to be treated by the court. The information must be transmitted to the court under seal accompanied by a nonconfidential description of such. The court is required to preserve the confidential or privileged status of the information during the course of the litigation. However, the court may examine the information *in camera* and disclose it under such terms and conditions as the court may order.

Subsection (c) provides for the transmittal to the Court of International Trade of confidential information sought in an application for disclosure under section 777(c) (2) of the Tariff Act of 1930. Such information shall be sent to the clerk of the court within 15 days after the service of the summons and complaint on the administering authority or the ITC, or within such other period as the court may order.

⁵⁶ Pursuant to Reorganization Plan No. 3 of 1979, the functions of the "administering authority" were transferred from the Department of the Treasury to the Department of Commerce, 44 Fed. Reg. 69273 (1979).

As in the case of the previous subsection, subsection (c) permits the court to prescribe rules for, among other things, the transmittal of confidential information to the court. In addition, the transmittal must be accompanied by a nonconfidential description of the confidential information sought under the application for disclosure.

This subsection requires the Court of International Trade to preserve the confidential status of the information but permits the court to examine it *in camera* and to disclose it under a protective order consistent with section 777(c) (2) of the Tariff Act of 1930.

Subsection (d) sets forth the rules governing the filing of the official record in all civil actions in which review is to proceed upon the basis of the administrative record, other than those covered by subsections (a), (b) and (c) of this section.

Under subsection (d) (1), the record is to be transmitted to the clerk of the court within forty days after the date of service of the summons and complaint upon the Government agency whose action is being challenged, or within such period of time as the court may specify. Transmittal is to proceed in accordance with the rules of the Court of International Trade. In addition, subsection (d) (1) defines those documents which shall constitute a part of the official record.

Subsection (d) (2) requires the Government agency to identify and transmit to the clerk of the court any confidential information required under subsection (d) (1). In addition, a non-confidential description of the confidential information shall accompany the transmittal. This subsection further provides that the confidential or privileged status of such information is to be preserved during the course of the litigation. However, the court may examine the information *in camera* and disclose it under such terms and conditions as the court may order.

Subsection (d) (3) permits the parties to stipulate that less than the entire administrative record provided for in subsection (d) (1) be transmitted to the clerk of the court.

Section 2636

Proposed section 2636 sets forth the time limits for the commencement of a civil action in the Court of International Trade.

Subsection (a) (1) provides that a civil action brought pursuant to section 515 of the Tariff Act of 1930 be commenced within 180 days after the date of mailing of the notice of the denial of the protest under section 515(a) of that Act. This restates existing law as found in 28 U.S.C. § 2631(a) (1). Thus, the notice of denial must be mailed for the statute of limitations to begin to run. A party cannot circumvent the notice of denial requirement and commence his action in the court prior to the mailing of the notice of denial, even though the statutory two-year period for the administrative decision may have expired.⁵⁷ Where the notice has not been mailed, the importer will have the right to seek relief pursuant to proposed sections 1581(i), 1585, and 2643(c) (1).

Subsection (a) (2) provides that a civil action brought pursuant to section 515 of the Tariff Act of 1930 be commenced within 180 days after the denial of a protest by operation of law under section 515(b) of that Act. This restates the existing law set forth in 28 U.S.C. § 2631(a) (2).

⁵⁷ See *Knickerbocker Liquors Corp.*, *supra* note 30.

Subsection (b) restates the current provision of law found in 28 U.S.C. § 2631(b). This subsection provides that a civil action brought pursuant to section 516 of the Tariff Act of 1930 be commenced within 30 days after the date of mailing of the notice transmitted under section 516(c) of that Act.

Subsection (c) provides that civil actions brought under section 516A of the Tariff Act of 1930, reviewing determinations other than those under sections 703(b), 703(c), 733(b) or 733(c) of that Act, be commenced within thirty days of the date of publication of such determination in the Federal Register. This substantially restates the law set forth in section 516A of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979.

Subsection (d) provides that a civil action brought under section 516A of the Tariff Act of 1930 for the review of a determination under section 703(c), or 733(c) or under section 703(b) or 733(b) of that Act be commenced within 10 days after the date of publication of such determination in the Federal Register.

Subsection (e) provides that a civil action contesting a final determination of the Secretary of Labor certifying or refusing to certify workers or the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under the Trade Act of 1974 be commenced within sixty days after the date of notice of such determination. This subsection parallels the present timing requirement of section 250 of the Trade Act of 1974 (19 U.S.C. § 2322), governing the commencement in a United States court of appeals of a civil action for the judicial review of a refusal to certify workers as eligible for adjustment assistance.

Subsection (f) sets forth the time limits for the commencement of a civil action under section 305(b)(1) of the Trade Agreements Act of 1979. Although the Trade Agreements Act of 1979 authorized the court to entertain this type of action, the Act did not specify a time limit for its commencement. This subsection provides that suit shall be instituted within 30 days after the date of publication of the determination in the Federal Register.

Subsection (g) establishes the time limit for making an application for an order of disclosure to the court pursuant to section 777(c)(2) of the Tariff Act of 1930. While the Trade Agreements Act of 1979 granted jurisdiction to the court to entertain this type of action, the Act did not set forth the time limit within which the application must be made. This subsection provides that the application shall be made to the Court of International Trade within 10 days after the denial of the request for the confidential information.

Subsection (h) sets forth the time limit for the commencement of a civil action contesting the denial or revocation of a customhouse broker's license under section 641(a) of the Tariff Act of 1930. It further establishes the time limit for the commencement of a civil action contesting the revocation or suspension of a customhouse broker's license under section 641(b) of that Act. In both instances, the civil action must be commenced within 60 days after the date of the entry of the decision of the Secretary of the Treasury. This provision parallels the current time limits for the commencement of such actions in a United States court of appeals as set forth in sections 641(a) and (b) of the Tariff Act of 1930.

Subsection (i) is a general provision governing the time limit for commencement of all civil actions other than those specifically enumerated in proposed subsections (a)–(h) of this section. This subsection establishes a two-year time limit for the commencement of such suits.

Section 2637

Proposed section 2637 establishes the requirements for the exhaustion of administrative remedies prior to the commencement of suit in the Court of International Trade.

Subsection (a) provides that prior to the institution of a suit contesting the denial of a protest under section 515 of the Tariff Act of 1930, all liquidated duties, charges or exactions must have been paid. This restates existing law as found in 28 U.S.C. § 1582(c). Subsection (a) also provides that a surety's obligation to pay such monies is limited to the amount of its bond related to each entry included in the denied protest. The limitation on the surety's liability is in keeping with the surety's right to seek judicial review of the denial of a protest, as established by the Trade Agreements Act of 1979.⁵⁸

Subsection (b) provides that before an action may be commenced in the Court of International Trade under section 516 of the Tariff Act of 1930, the administrative procedures set forth in that section must first be exhausted. This restates the existing law in 28 U.S.C. § 1582(c).

Subsection (c) provides that a civil action, pursuant to proposed section 1581(h), to contest a ruling by the Secretary of the Treasury, or the refusal by the Secretary to issue or change a ruling be commenced prior to exhaustion of one's administrative remedies. The court is authorized to permit this exception if the party commencing the action can demonstrate that he would be irreparably harmed if forced to exhaust his administrative remedies in following the traditional route prior to judicially challenging the Secretary's ruling or lack thereof.

The Committee believes this provision is essential in light of the grant of jurisdiction under proposed section 1581(h). Without this exception to the exhaustion rule, proposed section 1581(h) would well be rendered meaningless.

Subsection (d) states a general rule that in any other civil action the Court of International Trade shall require, where appropriate, the exhaustion of administrative remedies.

Section 2638

Proposed section 2638 authorizes parties to assert new grounds in support of their civil actions that were not raised in the administrative proceedings commenced pursuant to section 515 of the Tariff Act of 1930. The right to assert new grounds is subject to two limitations: 1) the new ground must apply to the same merchandise that was the subject of the administrative protest; and 2) the new ground must be related to the same administrative decision that was contested in the protest.

This restates existing law as set forth in 28 U.S.C. § 2632(d).

⁵⁸ See section 514(c)(1) of the Tariff Act of 1930 (19 U.S.C. § 1514(c)(1)).

Section 2639

Proposed section 2639 is concerned with the burden of proof and the evidence which may be introduced in a civil action commenced to challenge the valuation of merchandise or any of its components.

Subsection (a) (1) provides that in a civil action commenced pursuant to section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the ITC, or the administering authority is presumed to be correct. The burden to prove otherwise rests with the party challenging the decision. This expands the existing law, 28 U.S.C. § 2635(a), by including the ITC and the administering authority.

In restating existing law, the Committee does not intend to impose a limitation on the presumption of regularity and legality which is normally accorded to actions of a Government agency or official. Rather, the Committee intends to specifically emphasize the propriety of that presumption as it applies to civil actions commenced under section 515, 516, and 516A of the Tariff Act of 1930. Subsection (a) (1) is not intended to limit in any way the application of the presumption to actions not specified in this subsection.

Subsection (a) (2) provides that the presumption that an agency's determination is correct and the requirement that the challenging party bear the burden of proof as set forth in subsection (a) (1) do not apply in civil penalty or collection actions commenced pursuant to proposed section 1582, as contained in section 201 of this bill.

Subsection (b) establishes the burden of proof requirement for a civil action commenced pursuant to proposed section 1581(h) regarding a challenge to a ruling by the Secretary of the Treasury or the refusal by the Secretary to issue or change a ruling prior to the importation of the goods in question. In this instance, the party bringing the civil action must demonstrate by clear and convincing evidence that he would suffer irreparable harm if forced to obtain judicial review under subsection (a) of proposed section 1581.

The Committee intends that the Court of International Trade look to the same factors utilized by a federal district court in determining the existence of irreparable harm. In addition, the Committee intends that the court give particular consideration to the commercial and financial impact on the plaintiff of the decision of the Secretary of the Treasury with regard to the contemplated importation.

Subsection (c) establishes the type of evidence that may be admitted in a civil action before the Court of International Trade when the value of merchandise or any of its components is in issue. This substantially restates existing law as set forth in 28 U.S.C. § 2635(b). The parties may submit depositions, affidavits, price lists or catalogs as evidence of the value of the imported merchandise, its components, or the component material of chief value of such merchandise. The Committee believes that the ultimate determination pertaining to the imported merchandise may well depend on the value of the component. Thus, in an effort to remove any ambiguity in the law, the Committee specifically has authorized the use of affidavits, depositions, price lists and catalogs when the value of any component or component in chief value, as well as the imported merchandise itself, is in issue in a civil action before the Court of International Trade.

Section 2640

Proposed section 2640 specifies the scope and standard of review applicable in a civil action commenced in the Court of International Trade.

Subsection (a) (1) provides for a trial *de novo* in the court of International Trade in a civil action commenced pursuant to section 515 of the Tariff Act of 1930. This provision restates existing law.

Subsection (a) (2) provides for a trial *de novo* in the Court of International Trade in a civil action commenced pursuant to section 516 of the Tariff Act of 1930. This provision restates existing law.

Subsection (a) (3) provides for a trial *de novo* in a civil action commenced pursuant to section 305(b) (1) of the Trade Agreements Act of 1979. This provision is in accord with the intent of that Act.

Subsection (a) (4) provides for a trial *de novo* in a civil action commenced for an order of disclosure of confidential information pursuant to section 777(c) (2) of the Tariff Act of 1930. This provision is appropriate because a section 777(c) (2) action is akin to a suit under the Freedom of Information Act in which a trial *de novo* is required.

Subsection (a) (5) provides for a trial *de novo* in a civil action to challenge the denial or revocation of a customhouse broker's license pursuant to section 641(a) of the Tariff Act of 1930. The Committee believes this standard of review is appropriate in light of the limited nature of the record, if any, of the administrative proceeding which underlies the decision of the Secretary of the Treasury.

Subsection (a) (6) provides for a trial *de novo* in a civil penalty or collection action commenced pursuant to proposed section 1582. This standard of review is appropriate since the types of actions specified in section 1582 are presently commenced in federal district court, and a trial *de novo* is conducted in that court.

Subsection (b) provides that the Court of International Trade shall review a civil action commenced under section 516A of the Tariff Act of 1930, as specified by subsection (b) of that section.

Subsection (c) provides that the Court of International Trade shall review a civil action commenced to review a final determination of the Secretary of Labor or the Secretary of Commerce regarding eligibility for adjustment assistance according to the standard set forth in section 284 of the Trade Act of 1974, as added by section 613 of this bill. The standard of review is identical to that found in the current statute, section 250 of the Trade Act of 1974, governing judicial review of a refusal to certify workers as eligible for adjustment assistance.

Subsection (d) provides that in any civil action other than the ones in subsections (a) - (c) of this section, the Court of International Trade shall review the matter as provided for in the Administrative Procedures Act, 5 U.S.C. § 706.

Section 2641

Proposed section 2641 is concerned with witnesses and the inspection of documents.

Subsection (a) provides for the introduction of evidence, the direct and cross-examination of witnesses and the inspection of all samples and papers in any civil action before the Court of International Trade. This restates existing law as found in 28 U.S.C. § 2637(a).

In addition, this subsection provides that the Federal Rules of Evidence are to apply in all civil actions in the Court of International Trade, except as provided for in proposed section 2639, subsection (b) of this section, and the rules of the court.

Subsection (b) states that the Court of International Trade may disclose trade secrets and, privileged or confidential information under such terms and conditions as the court may order.

Section 2642

Proposed section 2642 provides that the Court of International Trade may order an analysis of imported merchandise and a report thereon by laboratories or agencies of the United States. This restates the existing law as set forth in 28 U.S.C. § 2636.

Section 2643

Proposed section 2643 sets forth the types of relief that may be ordered by the Court of International Trade.

Subsection (a) authorizes the Court of International Trade to enter a money judgment in favor of or against the United States in any civil action commenced under proposed section 1581, or proposed section 1582, or on any counterclaim, cross-claim or third-party action under proposed section 1583.

Subsection (a) makes a number of changes in existing law. Under existing law, if the court decides a case in favor of an importer, it returns the appropriate papers to the Customs Service with an order that the entry be reliquidated in accordance with the decision of the court. This reliquidation has the effect of requiring a refund of customs duties to the importer. Pursuant to this subsection, the court could simply enter a judgment for the amount to be refunded to the importer, and the judgment would be paid in the same manner as any other judgment against the United States.

Proposed section 2643 (a) also alters current law by permitting the court to enter a money judgment for the United States. Currently, the court cannot do so. This change in existing law is necessary because of proposed section 1583 that permits the United States to assert a counterclaim and because the Court of International Trade will hear cases instituted by the United States pursuant to proposed section 1582.

Subsection (b) is a new provision that empowers the Court of International Trade to remand the civil action before it for further judicial or administrative proceedings. In granting this remand power to the court, the Committee intends that the remand power be co-extensive with that of a federal district court. In addition, this subsection authorizes the court to order a retrial or rehearing to permit the parties to introduce additional evidence.

Subsection (b) has particular impact on civil actions brought pursuant to section 515 or 516 of the Tariff Act of 1930. Under existing law, for example, in a civil action commenced under the court's jurisdiction to entertain cases involving the classification or valuation of merchandise, if the plaintiff succeeds in demonstrating that the original decision of the Customs Service was incorrect but is unable to establish the correct classification or valuation, the court dismisses the civil action. In effect, the court holds in favor of the United States even though the plaintiff has demonstrated that the challenged decision of

the Customs Service was erroneous. Subsection (b) would permit the court in this situation to remand the matter to the Customs Service to make the correct decision or to schedule a retrial or rehearing so that the parties may introduce additional evidence.

Subsection (c) (1) is a general grant of authority for the Court of International Trade to order any form of relief that it deems appropriate under the circumstances. It is the Committee's intent that this authorization be deemed to grant the Court of International Trade remedial powers co-extensive with those of a federal district court. This provision makes it clear that the court may issue declaratory judgments, writs of prohibition and mandamus, orders of remand, and preliminary or permanent injunctive relief, except as provided in paragraphs (2), (3), and (4) of this subsection.

In the Trade Agreements Act of 1979, Congress, for the first time, authorized the Customs Court, renamed by this bill the Court of International Trade, to issue injunctive relief in limited circumstances. Subsection (c) (1) expands the circumstances under which the court may order injunctive relief. When a party requests the court to grant injunctive relief, the court is to be guided by the same factors utilized by a federal district court when it considers a request for a preliminary or permanent injunction.

Subsection (c) (2) establishes an exception to the general grant of remedial powers found in subsection (c) (1). This subsection prohibits the Court of International Trade from issuing an injunction or writ of mandamus in any civil action to review a final determination of the Secretary of Labor certifying or refusing to certify workers or the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under the Trade Act of 1974.

Subsection (c) (3) creates another exception to the general grant of remedial powers found in subsection (c) (1). Under this subsection, the court may only issue an order for the disclosure of that confidential information specified in section 777(c) (2) of the Tariff Act of 1930. This provision restates the law as it exists in section 777(c) (2). Thus, for example, the court may order disclosure by the ITC only of confidential information "concerning the domestic price or cost of production of the like product."

Subsection (c) (4) is the third exception to the general grant of remedial powers found in subsection (c) (1). Under this provision, the Court of International Trade may only grant declaratory relief in a civil action commenced under proposed section 1581(h) to review a ruling by the Secretary of the Treasury or the refusal by the Secretary to issue or change a ruling. It is the Committee's belief that declaratory relief is the appropriate remedy for this type of action. To permit injunctive relief would encourage persons to bring suit under proposed section 1581(h) rather than pursuing traditional methods of challenging the Secretary's ruling or a lack thereof. As such, the Committee feared that the exception would become the rule and did intend to create such a major shift in trade policy.

Subsection (d) provides that when a surety commences a civil action for a refund in the Court of International Trade and prevails in such

action, it may recover only the amount of liquidated duties, charges or exactions it paid on the entry in question. Any additional refund is to be paid to the importer of record.

Section 2644

Proposed section 2644 authorizes the Court of International Trade to award interest on any refund of liquidated duties, charges, or exactions in a civil action commenced pursuant to section 515 of the Tariff Act of 1930. The rate of interest shall be calculated in accordance with section 6621 of the Internal Revenue Code. This parallels the provision governing the rate of interest awarded for overpayments or underpayments of antidumping of countervailing duties as authorized by the Trade Agreements Act of 1979.⁵⁹ The period for the interest award shall run from the date of filing of the summons to the date of the refund.

For the purposes of this section, it is the Committee's intent that an order for the Customs Service to reliquidate the entry in accordance with the court's decision shall be deemed within the definition of the phrase "money judgment" as used in this section.

Section 2645

Proposed section 2645 provides for the issuance of decisions, findings of fact and conclusions of law.

Subsection (a) requires the Court of International Trade to issue a statement of findings of fact and conclusions of law, or an opinion in any contested civil action or when it issues a decision to grant preliminary injunctive relief. This restates existing law, as found in 28 U.S.C. § 2638(a).

Subsection (b) provides that after the Court of International Trade has rendered a judgment, it may, upon the motion of a party or *sua sponte*, amend its findings or amend its decision and judgment. Such a motion must be made within 30 days after the entry of judgment.

Subsection (c) provides that the decision of the Court of International Trade is final and conclusive unless a retrial or a rehearing is ordered pursuant to proposed section 2646 or a timely appeal is made to the United States Court of Appeals for International Trade, Patents and Trademarks. This restates existing law as found in 28 U.S.C. § 2638(b).

Section 2646

Proposed section 2646 authorizes the Court of International Trade to grant a retrial or a rehearing upon the motion of a party or *sua sponte*. Such motion must be made within 30 days of the entry of the judgment or order. This is a restatement of existing law as set forth in 28 U.S.C. § 2639.

Section 2647

Proposed section 2647 establishes priorities for cases pending before the Court of International Trade.

Cases involving the exclusion of perishable merchandise or the redelivery of such merchandise are to be given priority over all other civil actions in the Court of International Trade. Civil actions for the re-

⁵⁹ See section 778(b) of the Tariff Act of 1930 (19 U.S.C. § 1677(b)).

view of a determination under section 516A(a)(1)(B)(i) or section 516A(a)(1)(B)(ii) of the Tariff Act of 1930, as amended by section 608 of this bill, are given the second highest priority. Except for those actions noted above, civil actions under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise are given preference over other civil actions in the Court of International Trade. Finally, except for those civil actions referred to in the prior three categories, actions under section 516 and section 516A of the Tariff Act of 1930 are given priority over all other matters before the Court of International Trade.

Section 302

Section 302(a) amends Chapter 121, Title 28, United States Code, by adding a new section, section 1876, pertaining to jury trials in the United States Court of International Trade. Proposed section 1876 sets forth the necessary mechanisms for the court to conduct a jury trial.

Proposed section 1876(a) provides that when the court is to conduct a jury trial, the jury shall be selected in accordance with the jury selection plan of the district court for the judicial district in which the action is to be tried.

Proposed section 1876(b)(1) provides that when the Court of International Trade conducts a jury trial, the clerk of the district court for the judicial district in which the action is to be tried shall act as the Clerk of the Court of International Trade.

Proposed section 1876(b)(2) provides that the qualifications for jurors in a Court of International Trade jury shall be the same as those established under 28 U.S.C. § 1865(b) for jurors in a federal district court.

Proposed section 1876(b)(3) provides that each party in a jury trial before the Court of International Trade shall be entitled to challenge jurors in the same manner as is permitted in a federal district court under 28 U.S.C. § 1870.

Proposed section 1876(b)(4) provides for the compensation of jurors in a jury trial before the Court of International Trade in the same manner as is permitted in a federal district court under 28 U.S.C. § 1871.

Section 302(b) contains a technical amendment to the section analysis of Chapter 121, Title 28, United States Code, reflecting the addition of proposed section 1876.

Section 302(c) amends section 1862, Title 28, United States Code, making it clear that no citizen shall be excluded from service as a juror in the Court of International Trade on account of race, color, religion, sex, national origin or economic status.

TITLE IV—UNITED STATES COURT OF APPEALS FOR INTERNATIONAL TRADE, PATENTS AND TRADEMARKS

Section 401

Section 401 amends certain provisions of Title 28, United States Code, governing the jurisdiction of the United States Court of Customs and Patent Appeals, renamed by this bill the United States Court of Appeals for International Trade, Patents and Trademarks, over international trade matters.

Subsection (a) (1) amends 28 U.S.C. § 1541(a), the statute governing appeals from the United States Customs Court. This subsection provides that the United States Court of Appeals for International Trade, Patents and Trademarks shall have exclusive jurisdiction over appeals of all final decisions of the Court of International Trade.

Subsection (a) (2) amends 28 U.S.C. § 1541(c) by adding a new subsection, subsection (c), governing appeals from a decision of the Court of International Trade regarding the issuance of injunctive relief. This new subsection provides that the Court of Appeals for International Trade, Patents and Trademarks shall have exclusive jurisdiction over an appeal from any interlocutory order granting, continuing, modifying, refusing or dissolving an injunction or refusing to dissolve or modify an injunction. This grant of appellate authority is consistent with the expansion of the Court of International Trade's power to issue injunctions.

Subsection (b) (1) amends 28 U.S.C. § 1543. This is a technical amendment to conform section 1543, regarding appeals from ITC decisions on unfair trade practices, to the changes made in section 337 of the Tariff Act of 1930 by the Trade Act of 1974.

Section 402

Section 402 concerns itself with the powers of the United States Court of Appeals for International Trade, Patents and Trademarks.

Subsection (a) further amends Chapter 93 of Title 28 by adding a new section, section 1546. Proposed section 1546 provides that the Court of Appeals for International Trade, Patents and Trademarks shall have all the powers of law and equity of a United States court of appeals, including those conferred by statute. This provision parallels proposed section 1585, which grants the Court of International Trade all the powers of a United States district court.

Subsection (b) is a technical amendment to the section analysis of Chapter 93, Title 28, United States Code, to reflect the amendment made by section 402(a).

Section 403

Section 403 concerns itself with court procedures for the Court of Appeals for International Trade, Patents and Trademarks.

Subsection (a) amends 28 U.S.C. § 2601(a) by adding a new sentence at the end. The provision allows the filing of a cross-appeal within 14 days after the date that notice of the initial appeal was filed.

Subsection (b) (1) amends 28 U.S.C. § 2601(b) and is a necessary concomitant of subsection (a). This provision authorizes the filing of cross-appeals in the Court of Appeals for International Trade, Patents and Trademarks, thereby conforming the statute with the procedures which have developed through case law in that court.

Subsection (b) (2) eliminates the requirement that a notice of appeal include a concise statement of the errors complained of. The elimination of this requirement will bring the statute governing appeals to the Court of Appeals for International Trade, Patents and Trademarks into accord with the statutes governing appeals to the United States courts of appeals.

Subsection (c) further amends 28 U.S.C. § 2601(b). This subsection deals with service of the notice of appeal and reflects the broader range

of Government agencies that could be involved in a civil action before the Court of International Trade.

Subsection (d) amends 28 U.S.C. § 2601(c) by adding new language which specifies that the Court of Appeals for International Trade, Patents and Trademarks will apply the "clearly erroneous" standard when reviewing findings of fact by the Court of International Trade. This provision provides that the standard of review set forth in Rule 52(a) of the Federal Rules of Civil Procedure, and applied by the courts of appeals when reviewing findings of fact by a district court, is to be applied by the Court of Appeals for International Trade, Patents and Trademarks when reviewing findings of fact by the Court of International Trade.

The second part of this subsection allows a party to assert on appeal that the findings of fact were clearly erroneous, even though the party did not object to such in the Court of International Trade. This is principally a restatement of Rule 52(b) of the Federal Rules of Civil Procedure.

Subsection (e) (1) amends 28 U.S.C. § 2602 establishing the priorities for cases in the United States Court of Appeals for International Trade, Patents and Trademarks. This subsection essentially parallels the priorities established for cases pending in the Court of International Trade under proposed section 2647 in section 301 of this bill.⁶⁰ The subsection adds a fifth category of priority cases: appeals from the Secretary of Commerce provided for in headnote 6 to Schedule 8, part 4 of the Tariff Schedules of the United States.

Subsection (e) (2) is a technical amendment to the section analysis of Chapter 167, Title 28, United States Code, to reflect the amendment made by section 403(e) (1).

Section 404

Section 404 concerns the application of the Federal Rules of Evidence to proceedings in the United States Court of Appeals for International Trade, Patents and Trademarks.

Subsection (a) amends Chapter 167, Title 28, United States Code, by adding a new section, section 2603, at the end. The new section 2603 provides that the Federal Rules of Evidence are applicable in the Court of Appeals for International Trade, Patents and Trademarks in any appeal from a decision of the Court of International Trade.

Subsection (b) is a technical amendment to the section analysis of Chapter 167, Title 28, United States Code, to reflect the amendment made by section 404(a).

Section 405

Section 405 provides for a judicial conference for the United States Court of Appeals for International Trade, Patents and Trademarks.

Subsection (a) amends Chapter 167, Title 28, United States Code, by adding a second new section, section 2604. New section 2604 permits the Chief Judge of the United States Court of Appeals for International Trade, Patents and Trademarks to conduct an annual judicial conference to consider the business of the court and improvements in the administration of justice in the court. This section confirms by statute a practice which the court has developed over the past six years and is similar to provisions allowing the United States courts

⁶⁰ See proposed section 2647 for the text of the first four categories for civil action priorities.

of appeals to conduct annual judicial conferences. The Committee does not intend that this section be construed to authorize the enactment of new budget authority, but rather that funds available for the general operation of the court be utilized to cover the costs, if any, of conducting this annual judicial conference.

Subsection (b) is a technical amendment to the section analysis of Chapter 167, Title 28, United States Code, to reflect the amendment made by section 405(a).

TITLE V—TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28

Section 501

Section 501 contains a technical amendment to twenty-eight provisions of Title 28, United States Code, changing the name of the Customs Court to the Court of International Trade. The name change reflects the expanded jurisdiction and new responsibilities of the court.

Section 502

Section 502 contains a technical amendment to thirty-nine provisions of Title 28, United States Code, changing the name of the Court of Customs and Patent Appeals (CCPA) to the Court of Appeals for International Trade, Patents and Trademarks. The name change reflects the change in the name of the Customs Court to the Court of International Trade and more accurately reflects the jurisdiction of the CCPA.

Section 503

Section 503 amends 28 U.S.C. § 252. This section contains a technical amendment that changes the name of the Customs Court to the Court of International Trade. It also corrects an anachronistic grammatical construction in the provision.

Section 504

Section 504 contains an amendment to 28 U.S.C. § 518(a). The amendment establishes the Department of Justice as the agency within the Federal Government responsible for the coordination of positions taken by the Government in suits in the Court of International Trade.

Section 505

Section 505 contains a technical amendment which adds a new subsection, subsection (f), to 28 U.S.C. § 751. This subsection provides that when the Court of International Trade sits in a judicial district other than the Southern or Eastern Districts of New York, the clerk of the district court in which the Court of International Trade is sitting shall serve as the Clerk of the Court of International Trade.

Section 506

Section 506 amends 28 U.S.C. § 1337 by adding a new subsection, subsection (c). This provision clarifies the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 507

Section 507 amends 28 U.S.C. § 1352. This provision clarifies the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 508

Section 508 amends 28 U.S.C. § 1355. This provision clarifies the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 509

Section 509 amends 28 U.S.C. § 1356. This provision clarifies the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 510

Section 510 amends 28 U.S.C. § 1491. This provision clarifies the demarcation between the jurisdiction of the Court of International Trade and the United States district courts.

Section 511

Section 511 amends 28 U.S.C. § 1919. This provision grants the authority to the Court of International Trade to award costs under the same circumstances in which costs are awarded by a United States district court.

Section 512

Section 512(a) amends Chapter 125, Title 28 by adding a new section, section 1963A. This new section provides for the registration in any judicial district, of money judgments entered by the Court of International Trade. This parallels 28 U.S.C. § 1963, the statute governing the registration of money judgments entered by a United States district court.

Section 512(b) is a technical amendment to the section analysis of Chapter 125, Title 28, United States Code, to reflect the amendment made by section 512(a) of this bill.

Section 513

Section 513 amends the first paragraph of 28 U.S.C. § 2414. Pursuant to proposed section 2643(a) contained in section 301 of this bill, the Court of International Trade is authorized to enter money judgments against the United States. The amendment contained in section 513 would permit the payment of these judgments in the same manner as the payment of other money judgments against the United States ordered by a district court.

TITLE VI—TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS

Section 601

Section 601 contains a technical amendment which changes the name of the Customs Court to the Court of International Trade in eleven provisions of law, not found in Title 28, United States Code. The name change reflects the expanded jurisdiction and new responsibilities of the court.

Section 602

Section 602 contains a technical amendment which changes the name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks in

eighteen provisions of law, not found in Title 28, United States Code. The name change reflects the change in the name of Customs Court to the Court of International Trade and more accurately reflects the jurisdiction of the CCPA.

Section 603

Section 603 repeals the first section of the Act entitled "An Act to provide the name by which the Board of Appraisers and members thereof shall be known." That section dealt with the change of the name of the Board of General Appraisers to the United States Customs Court.

Section 604

Section 602 amends section 337(c) of the Tariff Act of 1930 (19 U.S.C. § 1337(c)). First, this provision clarifies the standard under which the Court of Appeals for International Trade, Patents and Trademarks reviews challenges regarding unfair practices in import trade under section 337(c). The effect of this provision will be to subject section 337 adjudicative determinations to the substantial evidence test of the Administrative Procedures Act.

Second, this provision emphasizes that the non-adjudicative findings regarding the public health and welfare will be subject to the standard of review set forth in the Administrative Procedures Act, in particular 5 U.S.C. § 706.

Section 605

Section 605 contains two technical amendments to section 514(a) of the Tariff Act of 1930. Section 605(a) expands the present jurisdiction of the court to allow a civil action to be commenced as a result of a denial of a protest for a demand for redelivery of imported goods to the custody of the Customs Service. The demand for redelivery is in reality no different than a decision to exclude merchandise for entry or delivery—a decision which is already reviewable by the court. The only distinction between a decision to exclude merchandise and a demand for redelivery is the timing of the decision by the Customs Service.

The proviso regarding the exclusion of merchandise pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) is a clarification of the court's jurisdiction in that 28 U.S.C. § 1543 provides that such determinations are directly reviewable by the Court of Customs and Patent Appeals, renamed by this bill the Court of Appeals for International Trade, Patents and Trademarks.

Section 605(b) contains a technical amendment to section 514(a) of the Tariff Act of 1930 and is necessitated by the changes made by Title III of this bill to Chapter 169, Title 28, United States Code.

Section 606

Section 606 contains a technical amendment to section 515(b) of the Tariff Act of 1930 to reflect the amendment made by the proposed section 1581, as contained in section 201 of this bill.

Section 607

Section 607 contains two technical amendments to section 516 of the Tariff Act of 1930. Section 607(a) corrects an error made in the

Trade Agreements Act of 1979 in defining the term "interested party" as used in section 516 of the Tariff Act of 1930.

Section 607(b) reflects the amendments made by Title II of this bill to Chapter 169, Title 28, United States Code.

Section 608

Section 608 contains four technical amendments to section 516A of the Tariff Act of 1930. Section 608(a) reflects the changes made by proposed section 2636(d) of this bill regarding the commencement of a civil action under section 703(c) or 733(c) involving cases that are extraordinarily complicated or under section 702(b) or 733(b) contesting a negative determination by the administering authority.

Section 608(b) makes conforming changes consistent with the amendments made by Title III of this bill to Chapter 169, Title 28, United States Code.

Section 608(c) strikes out the language in section 516A(c)(2) of the Tariff Act of 1930 pertaining to the factors to be considered by the court to determine if it is appropriate to issue an injunction. This amendment conforms the court's authority under section 516A(c)(2) to that in proposed section 2643(c)(1), as contained in section 301 of this bill.

Section 608(d) contains a technical amendment to section 516A(d) of the Tariff Act of 1930. This amendment is necessitated by a gap in the Trade Agreements Act of 1979. That Act required a party commencing a civil action under section 516A of the Tariff Act of 1930 to notify all interested parties; however, the 1979 Act did not empower the Court of International Trade to prescribe rules relating to the form, style or content of the notice or the time within which such notice must be given. Section 608(d) corrects this inadvertent omission by authorizing the court to prescribe the rules governing the required notice.

Section 609

Section 609 contains a technical amendment to section 592 of the Tariff Act of 1930, which is made necessary by the grant of jurisdiction to the Court of International Trade over civil penalty actions by proposed section 1582, as contained in section 201 of this bill. This section essentially restates the provisions of section 592(e) concerning the burden of proof and makes them applicable to section 592 civil penalty actions commenced in the Court of International Trade.

Section 610

Section 610 contains a technical amendment to section 604 of the Tariff Act of 1930 to reflect the changes made by proposed section 1582, as contained in section 201 of this bill.

Section 611

Section 611 contains two technical amendments to section 641(b) of the Tariff Act of 1930. These amendments are necessitated by the transfer to the Court of International Trade of jurisdiction over civil actions challenging the revocation or suspension of a customhouse broker's license, as provided by proposed section 1581(g)(2), as contained in section 201 of this bill.

Section 612

Section 612 repeals section 250 of the Trade Act of 1974. The repeal of section 250 is necessitated by the expanded right of judicial review provided for in proposed section 1581(d), as contained in section 201 of this bill. This expanded right of judicial review is reflected in a new section of the Trade Act of 1974, section 284, as added by section 613 of this bill.

Section 613

Section 613(a) is a conforming amendment to the grant of jurisdiction to the Court of International Trade by proposed section 1581(d). Section 613 amends Title II of the Trade Act of 1974 by adding a new section, section 284. This new section sets forth the rules governing judicial review of a final determination by the Secretary of Labor certifying or refusing to certify workers or the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance.

Proposed section 284 substantially parallels section 250 of the Trade Act of 1974 with certain modifications. These modifications reflect the transfer of jurisdiction to the Court of International Trade, the expansion of judicial review of a final determination certifying or refusing to certify eligibility for adjustment assistance, and the expanded standing provision that includes firms and communities as well as workers.

Section 613(b) is a technical amendment to the section analysis of Title II of the Trade Act of 1974, that reflects the amendment made by section 613(a).

TITLE VII—EFFECTIVE DATES AND MISCELLANEOUS PROVISIONS

Section 701

Section 701 contains the various effective date provisions.

Section 701(a) provides that the amendments made by the Customs Court Act of 1980 shall take effect on the date of enactment of this bill and shall apply to civil actions pending on or commenced on or after the date of enactment. The amendments covered by this subsection restate the existing jurisdiction and powers of the court that are retained by this bill. The effect of subsection (a) is to permit the court to exercise its jurisdiction and powers under existing law, including its new authority under the Trade Agreements Act of 1979. In this way, the Committee ensures that no litigant is deprived of the opportunity to have his case heard on the merits and to obtain the appropriate judicial remedy.

Subsection (b) provides that certain provisions of the Customs Courts Act of 1980 will apply only to civil actions commenced on or after the date of enactment of this bill. The provisions covered by this subsection are those which provide new jurisdiction, powers and procedures for the Court of International Trade. It is the Committee's intent that these provisions be accorded prospective effect so as not to work any undue hardship or deprivation of rights upon any litigant.

Subsection (c) provides that certain provisions of the Customs Courts Act of 1980 are effective only to civil actions commenced on or

after the 90th day after the enactment of this bill. These provisions pertain to United States Government actions for civil penalties, recoveries on a bond or recoveries for customs duties. The purpose of this delayed effective date is to permit the Government to resolve internal management problems occasioned by the transfer of jurisdiction over these actions from the district courts to the Court of International Trade.

Subsection (d) provides that the authorization for the Court of Appeals for International Trade, Patents and Trademarks to conduct an annual judicial conference will be effective as of October 1, 1980.

Section 702

Section 702 contains a general technical amendment that provides for a change in the name of the Customs Court to the Court of International Trade and change in the name of the Court of Customs and Patent Appeals to the Court of Appeals for International Trade, Patents and Trademarks in any statute or regulation of the United States.

Section 703

Subsection (a) preserves the status of any individual serving as Chief Judge or judge of the Customs Court with respect to the amendments made by Title II of this bill.

Subsection (b) applies the seventy-year-old rule contained in section 101 of this bill to the individual serving as Chief Judge of the United States Customs Court on or after the date of enactment.

Section 704

Section 704 provides that no case pending in the Customs Court or the Court of Customs and Patent Appeals shall be dismissed because of the enactment of the Customs Courts Act of 1980.

V. INFORMATION SUBMITTED PURSUANT TO RULES

A. BUDGET STATEMENT

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budgetary authority or increased expenditures.

B. COST

The Committee concurs with the estimate provided by the Congressional Budget Office and adopts that estimate as the cost estimate of the Committee for the purpose of clause 7 of House Rule XIII.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 18, 1980.

HON. PETER D. RODINO, JR.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, 2137 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for H.R. 7540, the Customs Courts Act of 1980.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ROBERT D. REISCHAUER
(For Alice M. Rivlin, Director).

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number : H.R. 7540.
2. Bill title : Customs Courts Act of 1980.
3. Bill status : As ordered reported by the House Committee on the Judiciary, June 25, 1980.
4. Bill purpose : This bill clarifies and expands the jurisdiction of the U.S. Customs Court and the type of relief it may award. It confers upon the Court all the powers in law and equity of a district court of the United States including the authority to conduct jury trials. In light of the Court's expanded jurisdiction and functions, the bill renames the Court the U.S. Court of International Trade. In addition, the bill clarifies the relationship of the Court of Customs and Patent Appeals (renamed the Court of Appeals for International Trade, Patents and Trademarks) to the Court of International Trade and provides for an annual judicial conference of the justices of the Court of Appeals to consider improvements in its administration of justice.
5. Cost estimate :

Estimated budget authority :

Fiscal year :	Millions
1981.....	\$1. 8
1982.....	1. 8
1983.....	1. 8
1984.....	1. 6
1985.....	1. 6

Estimated outlays :

Fiscal year :	
1981.....	1. 7
1982.....	1. 8
1983.....	1. 8
1984.....	1. 6
1985.....	1. 6

The costs of this bill fall within budget function 800.

6. Basis of estimate : For the purpose of this estimate, it is assumed that this bill will be enacted by October 1, 1980, and that the necessary amounts will be fully appropriated for each year.

Most of the provisions of this legislation represent a transfer of functions from the district courts to the Court of International Trade. No new causes of action are created, and the U.S. Customs Court believes that the increased workload can be easily absorbed by its existing personnel and facilities. The only provision of the legislation determined to have a significant impact on costs, as reflected in the cost estimate, is the payment of interest on monetary relief obtained by a plaintiff in civil actions brought under section 515 of the Tariff Act of 1930. The U.S. Customs Service of the Department of the Treasury has calculated interest payments that would have been made on refunds made in 1979 as an estimate of future annual payments. This

estimate has been adjusted to reflect changing assumptions about the adjusted prime lending rate (at which interest is calculated), but not for inflation, since many of the duties to be refunded were assessed many years ago and, while the prices of the goods imported may be rising, average duty rates have been falling.

The authority to conduct jury trials is not expected to result in additional costs to the federal government. First, the addition of this responsibility to the Court of International Trade represents a transfer from the district courts. Furthermore, prior to 1979, very few cases were ever litigated under 19 U.S.C. 1592, which relates to fraud and malfeasance in customs cases, the only action subject to jury trial in this bill. Because of the high penalties involved, most cases were settled penalties so more litigation may result, but there is no basis on which to estimate the number of future jury trials. The issue is further complicated by a recent Supreme Court decision that concluded that under section 1592 there may not need to be jury trials at all.

7. Estimate comparison: None.

8. Previous CBO estimate: On December 6, 1979, CBO transmitted a cost estimate for S. 1654, a similar bill ordered reported by the Senate Committee on the Judiciary on December 4, 1979. S. 1654 was estimated to have no significant budget impact, but did not include the interest payment and jury trial provisions of H.R. 7540.

9. Estimate prepared by: Kathy Rawitscher.

10. Estimate approved by:

C. G. NUCKOLS
(For James L. Blum,
Assistant Director for Budget Analysis).

C. INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1) (4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have an inflationary impact on prices and costs in the operation of the national economy.

D. OVERSIGHT STATEMENT

The Subcommittee on Monopolies and Commercial Law of this Committee exercises oversight responsibilities with respect to the status, jurisdiction, powers and procedures of the United States Customs Court. The Subcommittee recommended the favorable consideration of this bill. The Subcommittee will closely monitor the exercise of authority granted by this legislation.

No findings or recommendations of the Committee on Government Operations were received as referred to in rule XI, clause 2(1) (3) (D) of the Rules of the House of Representatives.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

TITLE 28, UNITED STATES CODE

* * * * *

PART I—ORGANIZATION OF COURTS

Chap.	Sec.
1. Supreme Court-----	1
* * * * *	
9. Court of [Customs and Patent Appeals] <i>Appeals for International Trade, Patents, and Trademarks</i> -----	211
11. [Customs Court] <i>Court of International Trade</i> -----	251
* * * * *	

CHAPTER 9—COURT OF [CUSTOMS AND PATENT APPEALS] *APPEALS FOR INTERNATIONAL TRADE, PATENTS, AND TRADEMARKS*

- Sec.
- 211. Appointment and number of judges.
 - 212. Precedence of judges.
 - 213. Tenure and salaries of judges.
 - 214. Sessions.
 - 215. Quorum.
 - 216. Opinions.

§ 211. Appointment and number of judges

The President shall appoint, by and with the advice and consent of the Senate, a chief judge and four associate judges who shall constitute a court of record known as the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*. Such court is hereby declared to be a court established under article III of the Constitution of the United States.

§ 212. Precedence of judges

The chief judge of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* shall have precedence and preside at any session of the court which he attends.

The associate judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

§ 213. Tenure and salaries of judges

Judges of the Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* shall hold office during good behavior. Each shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title.

§ 214. Sessions

The Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* may hold court at such times and places as it may fix by rule.

§ 215. Quorum

Three judges of the Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* constitute a quorum. The Concurrence of three judges is necessary to any decision.

§ 216. Opinions

The Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks*, on each appeal from a Patent Office decision, shall file a written opinion as part of the record and send a certified copy to the Commissioner of Patents who shall record it in the Patent Office.

CHAPTER 11—**[CUSTOMS COURT]** COURT OF INTERNATIONAL TRADE

Sec.

- 251. Appointment and number of judges; offices.
- 252. Tenure and salaries of judges.
- 253. Duties of chief judge; precedence of judges.
- 254. Single-judge trial.
- 255. Three-judge trials.
- 256. Trials at ports other than New York.
- 257. Publication of decisions.

§ 251. Appointment and number of judges; offices

[The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record known as the United States Customs Court. Such court is hereby declared to be a court established under article III of the Constitution of the United States. Not more than five of such judges shall be appointed from the same political party.]

[The President shall designate from time to time one of the judges to act as chief judge.]

[The offices of the court shall be located at the port of New York.]

(a) *The President shall appoint, by and with the advice and consent of the Senate, nine judges who shall constitute a court of record to be known as the United States Court of International Trade. The court is a court established under article III of the Constitution of the United States.*

(b) *The President shall designate one of the judges of the Court of International Trade who is less than seventy years of age to serve as*

chief judge. The chief judge shall continue to serve as chief judge until he reaches the age of seventy years and another judge is designated as chief judge by the President. After the designation of another judge to serve as chief judge, the former chief judge may continue to serve as a judge of the court.

(c) The offices of the Court of International Trade shall be located in New York, New York.

§ 252. Tenure and salaries of judges

【Judge of the Customs Court】 *Judges of the Court of International Trade* shall hold office during good behavior. Each shall receive a salary at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of this title.

§ 253. Duties of chief judge; precedence of judges

(a) The chief judge of the 【Customs Court】 Court of International Trade, with the approval of the court, shall supervise the fiscal affairs and clerical force of the court;

* * * * *

§ 254. Single-judge trials

Except as otherwise provided in section 255 of this title, the judicial power of the **【Customs Court】** *Court of International Trade* with respect to any action, suit or proceeding shall be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges.

§ 255. Three-judge trials

(a) Upon application of any party to a civil action, or upon his own initiative, the chief judge of the 【Customs Court】 Court of International Trade shall designate any three judges of the court to hear and determine any civil action which the chief judge finds: (1) raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order; or (2) has broad or significant implications in the administration or interpretation of the customs laws.

§ 256. Trials at ports other than New York

(a) The chief judge may designate any judge or judges of the court to proceed, together with necessary assistants, to any port or to any place within the jurisdiction of the United States to preside at a trial or hearing at the port or place.

*(b) Upon application of a party or upon his own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge may issue an order authorizing a judge of the court to preside in an evidentiary hearing in a foreign country whose laws do not prohibit such a hearing: *Provided, however,* That an interlocutory appeal may be taken from such an order pursuant to the provisions of section 1541(b) of this title, subject to the discretion of the Court of **【Customs and Patent Appeals】** *Appeals for International Trade, Patents, and Trademarks* as set forth in that section.*

§ 257. Publication of decisions

All decisions of the [Customs Court] *Court of International Trade* shall be preserved and open to inspection. The court shall forward copies of each decision to the Secretary of the Treasury or his designee and to the appropriate customs officer for the district in which the case arose. The Secretary shall publish weekly such decisions as he or the court may designate and abstracts of all other decisions.

CHAPTER 13—ASSIGNMENT OF JUDGES TO OTHER COURTS

* * * * *

§ 291. Circuit judges

(a) The Chief Justice of the United States may designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit where the need arises.

(b) The Chief Justice of the United States may designate and assign temporarily any circuit judge to serve as a judge of the Court of Claims or the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* upon presentation to him of a certificate of necessity by the chief judge of the court in which the need arises.

* * * * *

§ 292. District judges

(a) * * *

* * * * *

(e) The Chief Justice of the United States may designate and assign temporarily any district judge to serve as a judge of the Court of Claims, the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* or the [Customs Court] *Court of International Trade* upon presentation to him of a certificate of necessity by the chief judge of the court in which the need arises.

§ 293. Judges of other courts

(a) The Chief Justice of the United States may designate and assign temporarily any judge of the Court of Claims or the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* to serve, respectively, as a judge of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* or the Court of Claims upon presentation of a certificate of necessity by the chief judge of the court wherein the need arises, or to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.

(b) The Chief Justice of the United States may designate and assign temporarily any judge of the [Customs Court] to perform judicial duties in a district court in any circuit upon presentation of a cer-

tificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises.] *Court of International Trade to perform judicial duties in any circuit, either in a court of appeals or district court, upon presentation of a certificate of necessity by the chief judge or circuit justice of the circuit in which the need arises.*

(c) The chief judge of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* may, upon presentation to him by the chief judge of the [Customs Court] *Court of International Trade* of a certificate of necessity, designate and assign temporarily any judge of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* to serve as a judge of the [Customs Court] *Court of International Trade*.

[(d) The chief judge of the Customs Court may, upon presentation to him by the chief judge of the Court of Customs and Patent Appeals of a certificate of necessity, designate and assign temporarily any judge of the Customs Court to serve as a judge of the Court of Customs and Patent Appeals.]

(d) *The chief judge of the Court of International Trade may, upon presentation to him of a certificate of necessity by the chief judge of the Court of Appeals for International Trade, Patents, and Trademarks or the chief judge of the Court of Claims, designate and assign temporarily any judge of the Court of International Trade to serve as a judge of the Court of Appeals for International Trade, Patents, and Trademarks or the Court of Claims.*

* * * * *

CHAPTER 15—CONFERENCES AND COUNCILS OF JUDGES

* * * * *

§ 331. Judicial Conference of the United States

The Chief Justice of the United States shall summon annually the chief judge of each judicial circuit, the chief judge of the Court of Claims, the chief judge of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, a district judge from each judicial circuit, and two bankruptcy judges to a conference at such time and place in the United States as he may designate. He shall preside at such conference which shall be known as the Judicial Conference of the United States. Special sessions of the conference may be called by the Chief Justice at such times and places as he may designate.

The district judge to be summoned from each judicial circuit shall be chosen by the circuit and district judges of the circuit at the annual judicial conference of the circuit held pursuant to section 333 of this title and shall serve as a member of the conference for three successive years, except that in the year following the enactment of this amended section the circuit and district judges in the first, fourth, seventh, and tenth circuits shall choose a district judge to serve for one year, the circuit and district judges in the second, fifth, and eighth circuits shall choose a district judge to serve for two years and the circuit and district judges in the third, sixth, ninth, and District of Columbia

circuits shall choose a district judge to serve for three years. The bankruptcy judges to be summoned shall be chosen at large by all the bankruptcy judges. Each bankruptcy judge chosen shall serve as a member of the conference for three successive years, except that in the year following the effective date of this sentence the bankruptcy judges shall choose one bankruptcy judge to serve for two years.

If the chief judge of any circuit or the district judge chosen by the judges of the circuit or a bankruptcy judge chosen by the bankruptcy judges is unable to attend, the Chief Justice may summon any other circuit or district judge from such circuit or any other bankruptcy judge. If the chief judge of the Court of Claims, or the chief judge of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* is unable to attend, the Chief Justice may summon an associate judge of such court. Every judge summoned shall attend and, unless excused by the Chief Justice, shall remain throughout the sessions of the conference and advise as to the needs of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved.

The conference shall make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for assignment of judges to or from circuits or districts where necessary, and shall submit suggestions to the various courts, in the interest of uniformity and expedition of business.

The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law.

The Attorney General shall, upon request of the Chief Justice, report to such conference on matters relating to the business of the several courts of the United States, with particular reference to cases to which the United States is a party.

The Chief Justice shall submit to Congress an annual report of the proceedings of the Judicial Conference and its recommendations for legislation.

* * * * *

CHAPTER 17—RESIGNATION AND RETIREMENT OF JUSTICES AND JUDGES

* * * * *

§ 372. Retirement for disability; substitute judge on failure to retire

(a) Any justice or judge of the United States appointed to hold office during good behavior who becomes permanently disabled from

performing his duties may retire from regular active service, and the President shall, by and with the advice and consent of the Senate, appoint a successor.

Any justice or judge of the United States desiring to retire under this section shall certify to the President his disability in writing.

Whenever an associate justice of the Supreme Court, a chief judge of a circuit or the chief judge of the Court of Claims, Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks*, or **[Customs Court.]** *Court of International Trade*, desires to retire under this section, he shall furnish to the President a certificate of disability signed by the Chief Justice of the United States.

A circuit or district judge, desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his circuit.

A judge of the Court of Claims, Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks*, or **[Customs Court.]** *Court of International Trade* desiring to retire under this section, shall furnish to the President a certificate of disability signed by the chief judge of his court.

Each justice or judge retiring under this section after serving ten years continuously or otherwise shall, during the remainder of his lifetime, receive the salary of the office. A justice or judge retiring under this section who has served less than ten years in all shall, during the remainder of his lifetime, receive one-half the salary of the office.

(b) Whenever any judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a certificate of his disability signed by a majority of the members of the Judicial Council of his circuit in the case of a circuit or district judge, or by the Chief Justice of the United States in the case of the Chief Judge of the Court of Claims, Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks*, or **[Customs Court.]** *Court of International Trade*, or by the chief judge of his court in the case of a judge of the Court of Claims, Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks*, or **[Customs Court.]** *Court of International Trade* is presented to the President and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge shall not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the circuit district, or court.

CHAPTER 21—GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES

* * * * *

§ 451. Definitions

As used in this title:

The term “court of the United States” includes the Supreme Court of the United States, courts of appeals, district courts constituted by chapter 5 of this title, including the Court of Claims, the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, the [Customs Court] *Court of International Trade* and any court created by Act of Congress the judges of which are entitled to hold office during good behavior, and bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years.

The terms “district court” and “district court of the United States” mean the courts constituted by chapter 5 of this title.

The term “judge of the United States” includes judges of the courts of appeals, district courts, Court of Claims, Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, [Customs Court] *Court of International Trade* and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior, and judge of the bankruptcy courts, the judges of which are entitled to hold office for a term of 14 years.

The term “justice of the United States” includes the Chief Justice of the United States and the associate justices of the Supreme Court.

The terms “district” and “judicial district” means the districts enumerated in Chapter 5 of this title.

The term “department” means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term “agency” includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

* * * * *

§ 456. Traveling expenses of justices and judges

Each Justice or judge of the United States and each retired Justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official station, shall, upon his certificate, be paid by the Director of the Administrative Office of the United States Courts all necessary traveling expenses, and also a per diem allowance in lieu of actual expenses of subsistence (as defined in the Travel Expense Act of 1949, as amended, 63 Stat. 166; 5 U.S.C. 835) at the per diem rate provided for by the Travel Expense Act of 1949, as amended, or, in accordance with regulations prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial

Conference of the United States, reimbursement for his actual expenses or subsistence not in excess of the maximum amount fixed by the Travel Expense Act of 1949, as amended.

The official station of the Chief Justice of the United States, the Justices of the Supreme Court and the judges of the Court of Claims, the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, the United States Court of Appeals for the District of Columbia, the United States District Court for the District of Columbia, and the United States Bankruptcy Court for the District of Columbia, shall be the District of Columbia.

The official station of the judges of the [Customs Court] *Court of International Trade* shall be New York City.

The official station of each circuit, district and bankruptcy judge, including each district judge in the Territories and possessions, shall be that place where a district court is regularly held and at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains an actual abode in which he customarily lives.

Each circuit judge, each district judge, and each bankruptcy judge whose official station is not fixed expressly in the second paragraph of this section shall upon his appointment and from time to time thereafter as his official station may change, notify the Director of the Administrative Office of the United States Courts in writing of his actual abode and his official station.

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PART II—DEPARTMENT OF JUSTICE

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CHAPTER 31—THE ATTORNEY GENERAL

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§ 518. Conduct and argument of cases

(a) Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue suits and appeals in the Supreme Court and suits in the Court of Claims *and in the Court of International Trade* in which the United States is interested.

* * * * *

CHAPTER 37—UNITED STATES MARSHALS

§ 569. Powers and duties generally; supervision by Attorney General

(a) The United States marshal of each district is the marshal of the bankruptcy, of the district court, and of the court of appeals when sitting in his district, and of the [Customs Court] *Court of International Trade* holding sessions in his district elsewhere than in the Southern and Eastern Districts of New York, and may, in the discretion of the respective courts, be required to attend any session of court.

* * * * *

PART III—COURT OFFICERS AND EMPLOYEES

Chap.		Sec.
41.	Administrative Office of United States Courts-----	601
	* * * * *	
53.	Court of 【Customs and Patent Appeals】 <i>Appeals for International Trade, Patents, and Trademarks</i> -----	831
55.	【Customs Court】 <i>Court of International Trade</i> -----	871
	* * * * *	

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

* * * * *

§ 605. Budget estimates

The Director, under the supervision of the Judicial Conference of the United States, shall submit to the Bureau of the Budget annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the courts and the Administrative Office and the operation of the judicial survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The Director shall cause periodic examinations of the judicial survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the Director to the Judicial Conference.

Such estimates shall be approved, before presentation to the Bureau of the Budget, by the Judicial Conference of the United States, except that the estimate with respect to the **【Customs Court】** *Court of International Trade* shall be approved by such court.

All such estimates shall be included in the budget without revision, but subject to the recommendations of the Bureau of the Budget, as provided by section 11 of Title 31 for the estimates of the Supreme Court.

* * * * *

§ 610. Courts defined

As used in this chapter the word "courts" includes the courts of appeals, district courts, and bankruptcy courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, the Court of Claims, the Court of **【Customs and Patent Appeals】** *Appeals for International Trade, Patents, and Trademarks*, and the **【Customs Court】** *Court of International Trade*.

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CHAPTER 49—DISTRICT COURTS

* * * * *

§ 751. Clerks

(a) * * *

* * * * *

(f) *When the Court of International Trade is sitting in a judicial district, other than the Southern District or Eastern District of New York, the clerk of the district court of such judicial district or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of such district court, shall act in the district as clerk of the Court of International Trade, as prescribed by the rules and orders of the Court of International Trade for all purposes relating to the civil action then pending before such court.*

* * * * *

CHAPTER 53—COURT OF [CUSTOMS AND PATENT APPEALS] APPEALS FOR INTERNATIONAL TRADE, PATENTS, AND TRADEMARKS

Sec.

831. Clerk and employees.

832. Marshal.

833. Reporter.

834. Bailiffs and messengers.

§ 831. Clerk and employees

The Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* may appoint a clerk and such assistant clerks, stenographic law clerks, clerical assistants and other employees as may be necessary, all of whom shall be subject to removal by the court.

The clerk shall pay into the Treasury all fees, costs and other moneys collected by him. He shall maintain an office at the seat of government.

§ 832. Marshal

The Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* may appoint a marshal who shall serve within the District of Columbia and shall be subject to removal by the court.

He shall attend the court at its sessions, and shall serve and execute all process and orders issuing from it. He shall purchase books and supplies, supervise the library and perform such other duties as the court may direct. Under regulations prescribed by the Director of the Administrative Office of the United States Courts, he shall pay the salaries of judges, officers, and employees of the court and disburse funds appropriated for the expenses of the court.

United States marshals for other districts where sessions of the court are held shall serve as marshals of the court.

§ 833. Reporter

(a) The Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* may appoint a reporter who shall be subject to removal by the court.

§ 834. Bailiffs and messengers

The Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* may appoint necessary

bailiffs and messengers who shall be subject to removal by the court.

Each bailiff shall attend the court, preserve order, and perform such other necessary duties as the court directs.

CHAPTER 55—[CUSTOMS COURT] *COURT OF INTERNATIONAL TRADE*

Sec.

871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees.

872. Marshal and deputy marshals.

873. Criers, bailiffs, and messengers.

§ 871. Clerk, chief deputy clerk, assistant clerk, deputies, assistants, and other employees

The [Customs Court] *Court of International Trade* may appoint a clerk, a chief deputy clerk, an assistant clerk, deputy clerks, and such deputies, assistants, and other employees as may be necessary for the effective dispatch of the business of the court, who shall be subject to removal by the court.

§ 872. Marshal and deputy marshals

The [Customs Court] *Court of International Trade* may appoint a marshal and deputy marshals, who shall be subject to removal by the courts.

The marshal and his deputies shall attend court at its sessions, serve and execute all process and orders issued by it, and exercise the powers and perform the duties concerning all matters within such court's jurisdiction assigned to them by the court.

Under regulations prescribed by the Director of the Administrative Office of the United States Courts, the marshal shall pay the salaries, office expenses, and travel and subsistence allowances of the judges, officers, and employees of the court, and shall disburse funds appropriated for all expenses of the court.

On all disbursements made by the marshal of the [Customs Court] *Court of International Trade* for official salaries or expenses, the certificate of the payee shall be sufficient without verification on oath.

§ 873. Criers, bailiffs, and messengers

The [Customs Court] *Court of International Trade* may appoint such criers as it may require for said court, which criers shall also perform the duties of bailiffs and messengers and such other duties as the court directs and shall be subject to removal by the court.

CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

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§ 957. Clerks ineligible for certain offices

(a) * * *

(b) The clerk or assistant clerks of the Court of [Customs and Patent Appeals] *International Trade, Patents, and Trademarks* shall not be appointed a commissioner, master or referee in any case.

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PART IV—JURISDICTION AND VENUE

Chap.		Sec.
81.	Supreme Court.....	1251
83.	Courts of Appeals.....	1291
85.	District Courts; Jurisdiction.....	1331
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CHAPTER 81—SUPREME COURT

Sec.	
1251.	Original jurisdiction.
1252.	Direct appeals from decisions invalidating Acts of Congress.
1253.	Direct appeals from decisions of three-judge courts.
1254.	Courts of appeals; certiorari; appeal; certified questions.
1255.	Court of Claims; certiorari; certified questions.
1256.	Court of 【Customs and Patent Appeals】 <i>Appeals for International Trade, Patents, and Trademarks</i> ; certiorari.
1257.	State courts; appeal; certiorari.
1258.	Supreme Court of Puerto Rico; appeal; certiorari.

* * * * *

§ 1256. Court of **【Customs and Patent Appeals】** *Appeals for International Trade, Patents, and Trademarks*; certiorari

Cases in the Court of **【Customs and Patent Appeals】** *Appeals for International Trade, Patents, and Trademarks* may be reviewed by the Supreme Court by writ of certiorari.

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CHAPTER 85—DISTRICT COURTS; JURISDICTION

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§ 1337. Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: *Provided, however,* That the district courts shall have original jurisdiction of an action brought under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), only if the matter in controversy for each receipt or bill of lading exceeds \$10,000, exclusive of interest and costs.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where a plaintiff who files the case under section 20(11) of part I of the Interstate Commerce Act (49 U.S.C. 20(11)) or section 219 of part II of such Act (49 U.S.C. 319), originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of \$10,000, computed without regard to any set-

off or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of any interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) *The district courts shall not have jurisdiction under this section of any matter within the exclusive jurisdiction of the Court of International Trade under chapter 95 of this title.*

* * * * *

§ 1340. Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the [Customs Court] *Court of International Trade*.

* * * * *

§ 1352. Bonds executed under federal law

The district courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States, *except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.*

* * * * *

§ 1355. Fine, penalty or forfeiture

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, *except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.*

§ 1356. Seizures not within admiralty and maritime jurisdiction

The district courts shall have original jurisdiction, exclusive of the courts of the States, of any seizure under any law of the United States on land or upon waters not within admiralty and maritime jurisdiction, *except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.*

* * * * *

CHAPTER 91—COURT OF CLAIMS

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§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Ex-

changes, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States. To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

Nothing herein shall be construed to give the Court of Claims jurisdiction [in suits] of any civil action within the exclusive jurisdiction of the Court of International Trade, or of any action against, or founded on action of, the Tennessee Valley Authority, nor to amend or modify the provisions of the Tennessee Valley Authority Act of 1933, as amended, with respect to suits by or against the Authority.

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CHAPTER 93—COURT OF [CUSTOMS AND PATENT APPEALS] *APPEALS FOR INTERNATIONAL TRADE, PATENTS, AND TRADEMARKS*

Sec.

1541. Appeals from [Customs Court] *Court of International Trade* decisions.

1542. Patent Office decisions.

1543. [Tariff Commission decisions] *International Trade Commission determinations.*

1544. Certain findings by Secretary of Commerce.

1545. Decision of the Plant Variety Protection Office.

1546. *Powers in law and equity.*

§ 1541. Appeals from [Customs Court] *Court of International Trade* decisions

[(a) The Court of Customs and Patent Appeals has jurisdiction of appeals from all final judgments or orders of the United States Customs Court, and from any interlocutory order granting, continuing, modifying, refusing, or dissolving an injunction, or refusing to dissolve or modify an injunction, under section 516A(c) (2) of the Tariff Act of 1930.]

(a) *The Court of Appeals for International Trade, Patents, and Trademarks shall have exclusive jurisdiction of appeals from all final decisions of the Court of International Trade.*

(b) When the Chief Judge of the [Customs Court] *Court of International Trade* issues an order under the provisions of section 256(b) of this title; or when any judge in the [Customs Court] *Court of International Trade*, in issuing any other interlocutory order, includes in the order a statement that a controlling question of law is involved as to which there is substantial ground for difference of opinion and

that an immediate appeal from its order may materially advance the ultimate termination of the litigation, the Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* may, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That neither the application for nor the granting of an appeal hereunder stays proceedings in the **[Customs Court]** *Court of International Trade* unless a stay is ordered by a judge of the Customs Court or by the Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* or a judge of that court.

(c) *The Court of Appeals for International Trade, Patents, and Trademarks shall have exclusive jurisdiction of appeals from interlocutory orders of the Court of International Trade granting, continuing, modifying, refusing, or dissolving injunctions, or refusing to dissolve or modify injunctions.*

§ 1542. Patent Office decisions

The Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* shall have jurisdiction of appeals from decisions of:

(1) the Board of Appeals and the Board of Interference Examiners of the Patent Office as to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and such appeal by an applicant shall waive his right to proceed under section 63 of Title 35; and

(2) the Commissioner of Patents as to trademark applications and proceedings as provided in section 1071 of Title 15.

§ 1543. Tariff Commission decisions

[The Court of Customs and Patent Appeals] shall have jurisdiction to review, by appeal on questions of law only, the findings of the United States Tariff Commission as to unfair practices in import trade, made under section 1337 of Title 19.]

§ 1543. International Trade Commission determinations

The Court of Appeals for International Trade, Patents, and Trademarks shall have jurisdiction to review the final determinations of the United States International Trade Commission made under section 337 of the Tariff Act of 1930 relating to unfair trade practices in import trade.

§ 1544. Certain findings by Secretary of Commerce

The Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* shall have jurisdiction to review, by appeal on questions of law only, findings of the Secretary of Commerce under headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (relating to importation of instruments or apparatus).

§ 1545. Decision of the Plant Variety Protection Office

The Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* shall have nonexclusive jurisdiction of appeals under section 71 of the Plant Variety Protection Act.

§ 1546. Powers in law and equity

The Court of Appeals for International Trade, Patents, and Trade-marks shall have all the powers in law and equity of, or as conferred by statute upon, a court of appeals of the United States.

* * * * *

CHAPTER 121—JURIES; TRIAL BY JURY

Sec.

- 1861. Declaration of policy.
- 1862. Discrimination prohibited.
- 1863. Plan for random jury selection.
- 1864. Drawing of names from the master jury wheel; completion of juror qualification form.
- 1865. Qualifications for jury service.
- 1866. Selection and summoning of jury panels.
- 1867. Challenging compliance with selection procedures.
- 1868. Maintenance and inspection of records.
- 1869. Definitions.
- 1870. Challenges.
- 1871. Fees.
- 1872. Issues of fact in Supreme Court.
- 1873. Admiralty and maritime cases.
- 1874. Actions on bonds and specialties.
- 1875. Protection of jurors' employment.
- 1876. Trial by jury in the Court of International Trade.

* * * * *

§ 1862. Discrimination prohibited

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States *or in the Court of International Trade* on account of race, color, religion, sex, national origin, or economic status.

* * * * *

§ 1876. Trial by jury in the Court of International Trade

(a) *In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.*

(b) *Whenever the Court of International Trade conducts a jury trial—*

(1) *the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;*

(2) *the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;*

(3) *each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and*

(4) *jurors shall be compensated in accordance with section 1871 of this title.*

CHAPTER 95—CUSTOMS COURT

Sec.

1581. Powers generally.

1582. Jurisdiction of the Customs Court.

§ 1581. Powers generally

¶ The Customs Court and each judge thereof shall possess all the powers of a district court of the United States for preserving order, compelling the attendance of witnesses and the production of evidence.

§ 1582. Jurisdiction of the Customs Court

¶ (a) The Customs Court shall have exclusive jurisdiction of civil actions instituted by any person whose protest pursuant to the Tariff Act of 1930, as amended, has been denied, in whole or in part, by the appropriate customs officer, where the administrative decision, including the legality of all orders and findings entering into the same, involves: (1) the appraised value of merchandise; (2) the classification and rate and amount of duties chargeable; (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury; (4) the exclusion of merchandise from entry or delivery under any provisions of the customs laws; (5) the liquidation or reliquidation of an entry, or a modification thereof; (6) the refusal to pay a claim for drawback; or (7) the refusal to reliquidate an entry under section 520(c) of the Tariff Act of 1930, as amended.

¶ (b) The Customs Court shall have exclusive jurisdiction of civil actions brought by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended.

¶ (c) The Customs Court shall not have jurisdiction of an action unless (1) either a protest has been filed, as prescribed by section 514 of the Tariff Act of 1930, as amended, and denied in accordance with the provisions of section 515 of the Tariff Act of 1930, as amended, or if the action relates to a decision under section 516 of the Tariff Act of 1930, as amended, all remedies prescribed therein have been exhausted, and (2) except in the case of an action relating to a decision under section 516 of the Tariff Act of 1930, as amended, all liquidated duties, charges or exactions have been paid at the time the action is filed.

¶ (d) Only one civil action may be brought in the Customs Court to contest the denial of a single protest. However, any number of entries of merchandise involving common issues may be included in a single civil action. Actions may be consolidated by order of the court or by request of the parties, with approval of the court, if there are common issues.】

CHAPTER 95—COURT OF INTERNATIONAL TRADE

Sec.

1581. Civil actions against the United States and agencies and officers thereof.

1582. Civil actions commenced by the United States.

1583. Counterclaims, cross-claims, and third-party actions.

1584. Cure of defects.

1585. Powers in law and equity.

§ 1581. Civil actions against the United States and agencies and officers thereof

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.*

(c) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930.*

(d) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974 and any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act.*

(e) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.*

(f) *The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.*

(g) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—*

(1) any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930; and

(2) any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930.

(h) *The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the implementation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.*

(i) *In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) of this section and subject to the exception set forth in subsection (j) of this section, the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—*

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) *administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.*

(j) *The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.*

§ 1582. Civil actions commenced by the United States

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

(1) *to recover a civil penalty under section 592, 704(i) (2), or 734(i) (2) of the Tariff Act of 1930;*

(2) *to recover upon a bond relating to the importation of merchandise required by the laws of the United States or by the Secretary of the Treasury; or*

(3) *to recover customs duties.*

§ 1583. Counterclaims, cross-claims, and third-party actions

In any civil action in the Court of International Trade, the court shall have exclusive jurisdiction to render judgment upon any counterclaim, cross-claim, or third-party action of any party, if (1) such claim or action involves the imported merchandise that is the subject matter of such civil action, or (2) such claim or action is to recover upon a bond or customs duties relating to such merchandise.

§ 1584. Cure of defects

(a) *If a civil action within the exclusive jurisdiction of the Court of International Trade is commenced in a district court of the United States, the district court shall, in the interest of justice, transfer such civil action to the Court of International Trade, where such action shall proceed as if it had been commenced in the Court of International Trade in the first instance.*

(b) *If a civil action within the exclusive jurisdiction of a district court, a court of appeals, or the Court of Appeals for International Trade, Patents, and Trademarks is commenced in the Court of International Trade, the Court of International Trade shall, in the interest of justice, transfer such civil action to the appropriate district court or court of appeals or to the Court of Appeals for International Trade, Patents, and Trademarks, where such action shall proceed as if it had been commenced in such court in the first instance.*

§ 1585. Powers in law and equity

The Court of International Trade shall possess all the powers in law and equity of, or as conferred by statute upon, a district court of the United States.

* * * * *

CHAPTER 123—FEES AND COSTS

Sec.

1911. Supreme Court.

1912. Damages and costs on affirmance.

1913. Courts of appeals.

1914. District courts; filing and miscellaneous fees; rules of court.

1915. Proceedings in forma pauperis.

1916. Seamen's suits.

1917. District courts; fee on filing notice of or petition for appeal.
 1918. District courts; fines, forfeitures and criminal proceedings.
 1919. District courts; dismissal for lack of jurisdiction.
 1920. Taxation of costs.
 1921. United States marshal's fees.
 1922. Witness fees before United States commissioners.
 1923. Docket fees and costs of briefs.
 1924. Verification of bill of costs.
 1925. Admiralty and maritime cases.
 1926. Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*.
 1927. Counsel's liability for excessive costs.
 1928. Patent infringement action; disclaimer not filed.
 1929. Extraordinary expenses not expressly authorized.

§ 1919. District courts; dismissal for lack of jurisdiction

Whenever any action or suit is dismissed in any district court or the Court of International Trade for want of jurisdiction, such court may order the payment of just costs.

§ 1926. Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*

Fees and costs in the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* shall be fixed by a table of fees adopted by such court and approved by the Supreme Court. The fees and costs so fixed shall not, with respect to any item, exceed the fees and costs charged in the Supreme Court, and shall be accounted for and paid over to the Treasury.

CHAPTER 125—PENDING ACTIONS AND JUDGMENTS

Sec.

1961. Interest.
 1962. Lien.
 1963. Registration in other districts.
 1963A. *Registration of judgments of the Court of International Trade.*

§ 1963A. *Registration of judgments of the Court of International Trade*

(a) *A judgment in any civil action for the recovery of money or property entered by the Court of International Trade which has become final by appeal or expiration of time for appeal may be registered in any judicial district by filing a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.*

(b) *A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.*

PART VI—PARTICULAR PROCEEDINGS

Chap.

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CHAPTER 161—UNITED STATES AS PARTY GENERALLY

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§ 2414. Payment of judgments and compromise settlements

Except as provided by the Contract Disputes Act of 1978, payment of final judgments rendered by a district court or the *Court of International Trade* against the United States shall be made on settlements by the General Accounting Office. Payment of final judgments rendered by a State or foreign court or tribunal against the United States, or against its agencies or officials upon obligations or liabilities of the United States, shall be made on settlements by the General Accounting Office after certification by the Attorney General that it is in the interest of the United States to pay the same.

Whenever the Attorney General determines that no appeal shall be taken from a judgment or that no further review will be sought from a decision affirming the same, he shall so certify and the judgment shall be deemed final.

Except as otherwise provided by law, compromise settlements of claims referred to the Attorney General for defense of imminent litigation or suits against the United States, or against its agencies or officials upon obligations or liabilities of the United States, made by the Attorney General or any person authorized by him, shall be settled and paid in a manner similar to judgments in like causes and appropriations or funds available for the payment of such judgments are hereby made available for the payment of such compromise settlements.

* * * * *

CHAPTER 167—COURT OF **[CUSTOMS AND PATENT APPEALS]** *APPEALS FOR INTERNATIONAL TRADE, PATENTS, AND TRADEMARKS* PROCEDURE

Sec.

- 2601. Appeals from **[Customs Court]** *Court of International Trade* decisions.
- 2602. **[Precedence of American manufacturer, producer, or wholesaler cases]** *Precedence of cases.*
- 2603. *Rules of evidence.*
- 2604. *Judicial conference.*

§ 2601. Appeals from **[Customs Court]** *Court of International Trade* decisions

(a) A party may appeal to the Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks* from a final judgment or order of the **[Customs Court]** *Court of*

International Trade within sixty days after entry of the judgment or order. *If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days after the date on which the first notice of appeal was filed.*

(b) An appeal or cross appeal is made by filing in the office of the clerk of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* a notice of appeal [which shall include a concise statement of the errors complained of]. or cross appeal. A copy of the notice shall be served on the adverse parties. When the United States is an adverse party, service shall be made on the Attorney General [and the Secretary of the Treasury or their designees] and any official. Thereupon, the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* shall order the [Customs Court] *Court of International Trade* to transmit the record and evidence taken, together with either the findings of fact and conclusions of law or the opinion, as the case may be.

(c) The Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* may affirm, modify, vacate, set aside, or reverse any judgment or order of the [Customs Court] *Court of International Trade* lawfully brought before it for review, and may remand the cause and direct the entry of an appropriate judgment or order, or require such further proceedings as may be just under the circumstances. *Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the Court of International Trade to judge the credibility of the witnesses. A party may raise on appeal the question of whether the findings of fact are clearly erroneous, whether or not the party raising such question made an objection to such findings in the Court of International Trade or made a motion to amend such findings.* The judgment or order of the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* shall be final and conclusive unless modified, vacated, set aside, reversed, or remanded by the Supreme Court under section 2106 of this title.

[§ 2602. Precedence of American manufacturer, producer, or wholesaler cases

[(a) Every proceeding in the Court of Customs and Patent Appeals arising under section 516 of the Tariff Act of 1930, as amended, shall be given precedence over other cases on the docket of such court, except as provided for in paragraph (b) of this section, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

[(b) Appeals from findings by the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202) shall receive a preference over all other matters.]

§ 2602. Precedence of cases

The following civil actions in the Court of Appeals for International Trade, Patents, and Trademarks shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

(1) *First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.*

(2) *Second, a civil action for the review of a determination under section 516A (a) (1) (B) (i) or (ii) of the Tariff Act of 1930.*

(3) *Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.*

(4) *Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.*

(5) *Fifth, an appeal from findings of the Secretary of Commerce provided for in headnote 6 to schedule 8, part 4, of the Tariff Schedules of the United States (19 U.S.C. 1202).*

§ 2603. Rules of evidence

Except as provided in section 2639 or 2641 (b) of this title or in the rules prescribed by the court, the Federal Rules of Evidence shall apply in the Court of Appeals for International Trade, Patents, and Trademarks in any appeal from the Court of International Trade.

§ 2604. Judicial conference

The chief judge of the Court of Appeals for International Trade, Patents, and Trademarks is authorized to summon annually the judges of such court to a judicial conference, at a time and place that such chief judge designates, for the purpose of considering the business of such court and improvements in the administration of justice in such court.

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[CHAPTER 169—CUSTOMS COURT PROCEDURE]

[Sec.

2631. Time for commencement of action.

2632. Customs Court procedures and fees.

2633. Precedence of cases.

2634. Notice.

2635. Burden of proof; evidence of value.

2636. Analysis of imported merchandise.

2637. Witnesses; inspection of documents.

2638. Decisions; findings of fact and conclusions of law; effect of opinions.

2639. Retrial or rehearing.

[§ 2631. Time for commencement of action

[(a) An action over which the court has jurisdiction under section 1582 (a) of this title is barred unless commenced within one hundred and eighty days after:

[(1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515 (a) of the Tariff Act of 1930, as amended; or

[(2) the date of denial of a protest by operation of law pursuant to the provisions of section 515 (b) of the Tariff Act of 1930, as amended.

[(b) An action over which the court has jurisdiction under section 1582 (b) of this title is barred unless commenced within thirty days after the date of mailing of a notice sent pursuant to section 516 (c) of the Tariff Act of 1930, as amended, or, in the case of an action under section 516 (d) of such Act, after the date of publication of a notice under such section.

§ 2632. Customs Court procedure and fees

[(a) A party may contest (1) denial of a protest under section 515 of the Tariff Act of 1930, as amended; (2) a decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended; or (3) a determination by the Secretary of the Treasury under section 201 of the Antidumping Act, 1921, as amended, that a class or kind of merchandise is not being, nor likely to be, sold in the United States at less than its fair value, or under section 303 of the Tariff Act of 1930 that a bounty or grant is not being paid or bestowed; by bringing a civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court.

[(b) There shall be a filing fee payable upon commencing an action. The amount of the fee shall be fixed by the Customs Court but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a United States district court. The Customs Court may fix all other fees to be charged by the clerk of the court.

[(c) The Customs Court shall provide by rule for pleadings and other papers, for their amendment, service, and filing, for consolidations, severances, and suspensions of cases, and for other procedural matters.

[(d) The Customs Court, by rule, may consider any new ground in support of a civil action if the new ground (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision or decisions listed in section 514 of the Tariff Act of 1930, as amended, that were contested in the protest.

[(e) All pleadings and other papers filed in the Customs Court shall be served on all the adverse parties in accordance with the rules of the court. When the United States is an adverse party, service of the summons shall be made on the Attorney General and the Secretary of the Treasury or their designees.

[(f) Except as provided in section 516A of the Tariff Act of 1930, upon service of the summons on the Secretary of the Treasury or his designee in any action brought under subsection (a) (1) or (a) (2), the appropriate customs officer shall forthwith transmit the following items, if they exist, to the United States Customs Court as part of the official record of the civil action: (1) consumption or other entry; (2) commercial invoice; (3) special Customs invoice; (4) copy of protest; (5) copy of denial of protest in whole or in part; (6) importer's exhibits; (7) official samples; (8) any official laboratory reports; and (9) the summary sheet. If any of the aforesaid items do not exist in the particular case, an affirmative statement to that effect shall be transmitted as part of the official record.

[(g) Upon service of the summons on the Secretary of the Treasury or his designee in an action contesting the Secretary's determination under section 201 of the Antidumping Act, 1921, as amended, that a class or kind of foreign merchandise is not being, nor likely to be, sold in the United States at less than its fair value, the Secretary or his designee shall forthwith transmit to the United States Customs Court, as the official record of the civil action, a certified copy of the transcript of any hearing held by the Secretary in the particular antidumping

proceeding pursuant to section 201(d)(1) of the Antidumping Act, 1921, as amended, and certified copies of all notices, determinations, or other matters which the Secretary has caused to be published in the Federal Register in connection with the particular antidumping proceeding. Upon service of the summons on the Secretary of the Treasury or his designee in an action contesting the Secretary's determination under section 303 of the Tariff Act of 1930 that a bounty or grant is not being paid or bestowed, the Secretary or his designee shall forthwith transmit to the United States Customs Court, as the official record of the civil action, a certified copy of the transcript of all hearings held by the Secretary in the proceeding which resulted in such determination and certified copies of all notices, determinations, or other matters which the Secretary has caused to be published in the Federal Register in connection with such proceeding.

[§ 2633. Precedence of cases

[(a) Every proceeding in the Customs Court arising under section 516 and section 516A of the Tariff Act of 1930, as amended, shall be given precedence over other cases on the docket of the court, and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

[(b) Of those proceedings given precedence under subsection (a) of this section, any proceeding for the review of a determination under section 516A(a)(1)(B) or 516A(a)(1)(E) of the Tariff Act of 1930 shall be given priority over other such proceedings.

[§ 2634. Notice

[(Reasonable notice of the time and place of trial before a judge of the Customs Court shall be given to all parties to any proceeding, under rules prescribed by the court.

[§ 2635. Burden of proof; evidence of value

[(In any matter in the Customs Court:

[(a) The decision of the Secretary of the Treasury, or his delegate, is presumed to be correct. The burden to prove otherwise shall rest upon the party challenging a decision.

[(b) Where the value of merchandise is in issue:

[(1) Reports or depositions of consuls, customs officers, and other officers of the United States and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted in evidence when served upon the opposing party in accordance with the rules of the court.

[(2) Price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

[(c) The value of merchandise shall be determined from the evidence in the record and that adduced at the trial whether or not the merchandise or samples thereof are available for examination.

[§ 2636. Analysis of imported merchandise

[(A judge of the Customs Court may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

§ 2637. Witnesses; inspection of documents

[(a) Except as otherwise provided by law, in any proceeding in the Customs Court, under rules prescribed by the court, the parties and their attorneys shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and all papers admitted or offered as evidence, except as provided in subsection (b) of this section.

[(b) In an action instituted under section 2632 (a) of this title, the plaintiff may not inspect any documents or papers of a consignee or importer disclosing any information which the Customs Court deems unnecessary or improper to be disclosed.

§ 2638. Decisions; findings of fact and conclusions of law; effect of opinions

[(a) A decision of the judge in a contested case shall be supported by either (1) a statement of findings of fact and conclusions of law, or (2) an opinion stating the reasons and facts upon which the decision is based.

[(b) The decision of the judge is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2639 of this title or an appeal is made to the Court of Customs and Patent Appeals within the time and in the manner provided in section 2601 of this title.

§ 2639. Retrial or rehearing

[The judge who has rendered a judgment or order may, upon motion of a party or upon his own motion grant a retrial or a rehearing, as the case may be. A party's motion must be made or the judge's action on his own motion must be taken, not later than thirty days after entry of the judgment or order.]

CHAPTER 169—COURT OF INTERNATIONAL TRADE PROCEDURE

Sec.

2631. *Persons entitled to commence a civil action.*

2632. *Commencement of a civil action.*

2633. *Procedure and fees.*

2634. *Notice.*

2635. *Filing of official documents.*

2636. *Time for commencement of action.*

2637. *Exhaustion of administrative remedies.*

2638. *New grounds in support of a civil action.*

2639. *Burden of proof; evidence of value.*

2640. *Scope and standard of review.*

2641. *Witnesses; inspection of documents.*

2642. *Analysis of imported merchandise.*

2643. *Relief.*

2644. *Interest.*

2645. *Decisions.*

2646. *Retrial or rehearing.*

2647. *Precedence of cases.*

§ 2631. Persons entitled to commence a civil action

(a) *A civil action contesting the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed the protest pursuant to section 514 of such Act, or by a surety on in the transaction which is the subject of the protest.*

(b) *A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person who filed such petition.*

(c) *A civil action contesting a determination listed in section 516A of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party who was a party to the proceeding in connection with which the matter arose.*

(d) *A civil action to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974, or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act, may be commenced by a worker, group of workers, certified or recognized union, authorized representative of such worker or group, firm or its representative, or community that applies for assistance under such Act and is aggrieved by such final determination, or by any other interested domestic party that is aggrieved by such final determination.*

(e) *A civil action to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 may be commenced in the Court of International Trade by any person who was a party-at-interest with respect to such determination.*

(f) *A civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930 may be commenced in the Court of International Trade by any interested party whose application for disclosure of such confidential information was denied under section 777(c)(1) of such Act.*

(g)(1) *A civil action to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was denied or revoked.*

(2) *A civil action to review any order of the Secretary of the Treasury to revoke or suspend a customhouse broker's license under section 641(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose license was revoked or suspended.*

(h) *A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade by the person who would have standing to bring a civil action under section 1581(a) of this title if he imported the goods involved and filed a protest which was denied, in whole or in part, under section 515 of the Tariff Act of 1930.*

(i) *Any civil action of which the Court of International Trade has jurisdiction, other than an action specified in subsections (a)-(h) of this section, may be commenced in the court by any person adversely affected or aggrieved by agency action within the meaning of section 702 of title 5.*

(j)(1) *Any person who would be adversely affected or aggrieved by a decision in a civil action pending in the Court of International*

Trade may, by leave of court, intervene in such action, except that—

(A) *no person may intervene in a civil action under section 515 or 516 of the Tariff Act of 1930;*

(B) *in a civil action under section 516A of the Tariff Act of 1930, only an interested party who was a party to the proceeding in connection with which the matter arose may intervene, and such person may intervene as a matter of right; and*

(C) *in a civil action under section 777(c)(2) of the Tariff Act of 1930, only a person who was a party to the investigation may intervene, and such person may intervene as a matter of right.*

(2) *In those civil actions in which intervention is by leave of court, the Court of International Trade shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.*

(k) *In this section—*

(1) *“interested party” has the meaning given such term in section 771(9) of the Tariff Act of 1930; and*

(2) *“party-at-interest” means—*

(A) *a foreign manufacturer, producer, or exporter, or a United States importer, of merchandise which is the subject of a final determination under section 305(b)(1) of the Trade Agreements Act of 1979;*

(B) *a manufacturer, producer, or wholesaler in the United States of a like product;*

(C) *United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product; and*

(D) *a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.*

§ 2632. Commencement of a civil action

(a) *Except for civil actions specified in subsections (b) and (c) of this section, a civil action in the Court of International Trade shall be commenced by filing concurrently with the clerk of the court a summons and complaint, with the content and in the form, manner, and style prescribed by the rules of the court.*

(b) *A civil action in the Court of International Trade under section 515 or section 516 of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons, with the content and in the form, manner, and style prescribed by the rules of the court.*

(c) *A civil action in the Court of International Trade under section 515A of the Tariff Act of 1930 shall be commenced by filing with the clerk of the court a summons or a summons and a complaint, as prescribed in such section, with the content and in the form, manner, and style prescribed by the rules of the court.*

(d) *The Court of International Trade may prescribe by rule that any summons, pleading, or other paper mailed by registered or certified mail properly addressed to the clerk of the court with the proper postage affixed and return receipt requested shall be deemed filed as of the date of mailing.*

§ 2633. Procedure and fees

(a) A filing fee shall be payable to the clerk of the Court of International Trade upon the commencement of a civil action in such court. The amount of the fee shall be prescribed by the rules of the court, but shall be not less than \$5 nor more than the filing fee for commencing a civil action in a district court of the United States. The court may fix all other fees to be charged by the clerk of the court.

(b) The Court of International Trade shall prescribe rules governing the summons, pleadings, and other papers, for their amendment, service, and filing, for consolidations, severances, suspensions of cases, and for other procedural matters.

(c) All summons, pleadings, and other papers filed in the Court of International Trade shall be served on all parties in accordance with rules prescribed by the court. When the United States, its agencies, or its officers are adverse parties, service of the summons shall be made upon the Attorney General and the head of the Government agency whose action is being contested. When injunctive relief is sought, the summons, pleadings, and other papers shall also be served upon the named officials sought to be enjoined.

§ 2634. Notice

Reasonable notice of the time and place of trial or hearing before the Court of International Trade shall be given to all parties to any civil action, as prescribed by the rules of the court.

§ 2635. Filing of official documents

(a) (1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

- (A) the consumption or other entry and the entry summary;
- (B) the commercial invoice;
- (C) the special customs invoice;
- (D) a copy of the protest or petition;
- (E) a copy of the denial, in whole or in part, of the protest or petition;

- (F) the importer's exhibits;
- (G) the official and other representative samples;
- (H) any official laboratory reports; and
- (I) a copy of any bond relating to the entry.

(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.

(b) (1) In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, within forty days or within such other period of time as the court may specify, after the date of service of a complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall transmit to the clerk of the court the record of

such action, as prescribed by the rules of the court. The record shall, unless otherwise stipulated by the parties, consist of—

(A) a copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of *ex parte* meetings required to be maintained by section 777 (a) (3) of the Tariff Act of 1930; and

(B) (i) a copy of the determination and the facts and conclusions of law upon which such determination was based, (ii) all transcripts or records of conferences or hearings, and (iii) all notices published in the Federal Register.

(2) The administering authority or the Commission shall identify and transmit under seal to the clerk of the court any document, comment, or information that is accorded confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall be accompanied by a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine the confidential or privileged material *in camera* and may make such material available under such terms and conditions as the court may order.

(c) Within fifteen days, or within such other period of time as the Court of International Trade may specify, after service of a summons and complaint in a civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777 (c) (2) of the Tariff Act of 1930, the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. Such information shall be accompanied by a nonconfidential description of the nature of the information being transmitted. The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information *in camera* and may make such information available under a protective order consistent with section 777 (c) (2) of the Tariff Act of 1930.

(d) (1) In any other civil action in the Court of International Trade in which judicial review is to proceed upon the basis of the record made before an agency, the agency shall, within forty days or within such other period of time as the court may specify, after the date of service of the summons and complaint upon the agency, transmit to the clerk of the court, as prescribed by its rules—

(A) a copy of the contested determination and the findings or report upon which such determination was based;

(B) a copy of any reported hearings or conferences conducted by the agency; and

(C) any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action.

(2) *The agency shall identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. Any such document, comment, or information shall include a nonconfidential description of the nature of the material being transmitted. The confidential or privileged status of such material shall be preserved in the civil action, but the court may examine such material in camera and may make such material available under such terms and conditions as the court may order.*

(3) *The parties may stipulate that fewer documents, comments, or other information than those specified in paragraph (1) of this subsection shall be transmitted to the clerk of the court.*

§ 2636. Time for commencement of action

(a) *A civil action contesting the denial, in whole or in part, of a protest under section 515 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade—*

(1) within one hundred and eighty days after the date of mailing of notice of denial of a protest under section 515(a) of such Act; or

(2) within one hundred and eighty days after the date of denial of a protest by operation of law under the provisions of section 515(b) of such Act.

(b) *A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of mailing of a notice pursuant to section 516(c) of such Act.*

(c) *A civil action contesting a reviewable determination listed in section 516A of the Tariff Act of 1930, other than a determination under section 703(b), 703(c), 733(b), or 733(c) of such Act, is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.*

(d) (1) *A civil action contesting a determination by the administering authority under section 703(c) or 733(c) of the Tariff Act of 1930 that a case is extraordinarily complicated is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.*

(2) *A civil action contesting a negative determination by the administering authority under section 703(b) or 733(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the publication of such determination in the Federal Register.*

(e) *A civil action contesting a final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974, or a final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act, is barred unless commenced in accordance with the rules of the*

Court of International Trade within sixty days after the date of notice of such determination.

(f) *A civil action contesting a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979 is barred unless commenced in accordance with the rules of the Court of International Trade within thirty days after the date of the publication of such determination in the Federal Register.*

(g) *A civil action involving an application for the issuance of an order making confidential information available under section 777(c)(2) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within ten days after the date of the denial of the request for such confidential information.*

(h) *A civil action contesting the denial or revocation by the Secretary of the Treasury of a customhouse broker's license under section 641(a) of the Tariff Act of 1930 or the revocation or suspension by such Secretary of a customhouse broker's license under section 641(b) of such Act is barred unless commenced in accordance with the rules of the Court of International Trade within sixty days after the date of the entry of the decision or order of such Secretary.*

(i) *A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsections (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.*

§ 2637. Exhaustion of administrative remedies

(a) *A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.*

(b) *A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced only by a person who has first exhausted the procedures set forth in such section.*

(c) *A civil action described in section 1581(h) of this title may be commenced prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.*

(d) *In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.*

§ 2638. New grounds in support of a civil action

In any civil action under section 515 of the Tariff Act of 1930 in which the denial, in whole or in part, of a protest is a precondition to the commencement of a civil action in the Court of International Trade, the court, by rule, may consider any new ground in support of the civil action if such new ground—

(1) applies to the same merchandise that was the subject of the protest; and

(2) is related to the same administrative decision listed in section 514 of the Tariff Act of 1930 that was contested in the protest.

§ 2639. Burden of proof; evidence of value

(a) (1) *Except as provided in paragraph (2) of this subsection, in any civil action commenced in the Court of International Trade under section 515, 516, or 516A of the Tariff Act of 1930, the decision of the Secretary of the Treasury, the administering authority, or the International Trade Commission is presumed to be correct. The burden of proving otherwise shall rest upon the party challenging such decision.*

(2) *The provisions of paragraph (1) of this subsection shall not apply to any civil action commenced in the Court of International Trade under section 1582 of this title.*

(b) *In any civil action described in section 1581(h) of this title, the person commencing the action shall have the burden of making the demonstration required by such section by clear and convincing evidence.*

(c) *Where the value of merchandise or any of its components is in issue in any civil action in the Court of International Trade—*

(1) reports or depositions of consuls, customs officers, and other officers of the United States, and depositions and affidavits of other persons whose attendance cannot reasonably be had, may be admitted into evidence when served upon the opposing party as prescribed by the rules of the court; and

(2) price lists and catalogs may be admitted in evidence when duly authenticated, relevant, and material.

§ 2640. Scope and standard of review

(a) *The Court of International Trade shall make its determinations upon the basis of the record made before the court in the following categories of civil actions:*

(1) Civil actions contesting the denial of a protest under section 515 of the Tariff Act of 1930.

(2) Civil actions commenced under section 516 of the Tariff Act of 1930.

(3) Civil actions commenced to review a final determination made under section 305(b)(1) of the Trade Agreements Act of 1979.

(4) Civil actions commenced under section 777(c)(2) of the Tariff Act of 1930.

(5) Civil actions commenced to review any decision of the Secretary of the Treasury to deny or revoke a customhouse broker's license under section 641(a) of the Tariff Act of 1930.

(6) Civil actions commenced under section 1582 of this title.

(b) *In any civil action commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the court shall review the matter as specified in subsection (b) of such section.*

(c) *In any civil action commenced in the Court of International Trade to review any final determination of the Secretary of Labor certifying or refusing to certify workers, communities, or firms as eligible for assistance under the Trade Act of 1974, or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act, the court shall review the matter as specified in section 284 of such Act.*

(d) *In any civil action not specified in this section, the court shall review the matter as provided in section 706 of title 5.*

§ 2641. Witnesses; inspection of documents

(a) *Except as otherwise provided by law, in any civil action in the Court of International Trade, each party and its counsel shall have an opportunity to introduce evidence, to hear and cross-examine the witnesses of the other party, and to inspect all samples and papers admitted or offered as evidence, as prescribed by the rules of the court. Except as provided in section 2639 of this title, subsection (b) of this section, or the rules of the court, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade.*

(b) *The Court of International Trade may order that trade secrets and commercial or financial information which is privileged and confidential, or any information provided to the United States by any foreign government or foreign person, may be disclosed to a party, its counsel, or any other person under such terms and conditions as the court may order.*

§ 2642. Analysis of imported merchandise

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies of the United States.

§ 2643. Relief

(a) *In any civil action commenced under section 1581 or 1582 of this title or in any counterclaim, cross-claim, or third-party action under section 1583 of this title, the Court of International Trade may enter a money judgment for or against the United States.*

(b) *If the Court of International Trade is unable to determine the correct decision on the basis of the evidence presented in any civil action, the court may order a retrial or rehearing for all purposes, or may order such further administrative or adjudicative procedures as the court considers necessary to enable it to reach the correct decision.*

(c) (1) *Except as provided in paragraphs (2), (3), and (4) of this subsection, the Court of International Trade may, in addition to the orders specified in subsections (a) and (b) of this section, order any other form of relief that is appropriate in a civil action, including, but not limited to, declaratory judgments, orders of remand, injunctions, and writs of mandamus and prohibition.*

(2) *The Court of International Trade may not grant an injunction or issue a writ of mandamus in any civil action commenced to review any final determination of the Secretary of Labor certifying or refusing to certify workers as eligible for adjustment assistance under the Trade Act of 1974 or any final determination of the Secretary of Commerce certifying or refusing to certify firms or communities as eligible for adjustment assistance under such Act.*

(3) *In any civil action involving an application for the issuance of an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the Court of International Trade may issue an order of disclosure only with respect to the information specified in such section.*

(4) *In any civil action described in section 1581(h) of this title, the Court of International Trade may only order the appropriate declaratory relief.*

(d) *If a surety commences a civil action in the Court of International Trade, such surety shall recover only the amount of the liquidated duties, charges, or exactions paid on the entries included in such action. The excess amount of any recovery shall be paid to the importer of record.*

§ 2644. Interest

If, in a civil action in the Court of International Trade under section 515 of the Tariff Act of 1930, the plaintiff obtains monetary relief by a judgment or under a stipulation agreement, interest shall be allowed at an annual rate established under section 6621 of the Internal Revenue Code of 1954. Such interest shall be calculated from the date of the filing of the summons in such action to the date of the refund.

§ 2645. Decisions

(a) *A final decision of the Court of International Trade in a contested civil action or a decision granting or refusing a preliminary injunction shall be supported by—*

- (1) *a statement of findings of fact and conclusions of law; or*
- (2) *an opinion stating the reasons and facts upon which the decision is based.*

(b) *After the Court of International Trade has rendered a judgment, the court may, upon the motion of a party or upon its own motion, amend its findings or make additional findings and may amend the decision and judgment accordingly. A motion of a party of the court shall be made not later than thirty days after the date of entry of the judgment.*

(c) *A decision of the Court of International Trade is final and conclusive, unless a retrial or rehearing is granted pursuant to section 2646 of this title or an appeal is taken to the Court of Appeals for International Trade, Patents, or Trademarks within the time and in the manner provided in section 2601 of this title.*

§ 2646. Retrial or rehearing

After the Court of International Trade has rendered a judgment or order, the court may, upon the motion of a party or upon its own motion, grant a retrial or rehearing, as the case may be. A motion of a party or the court shall be made not later than thirty days after the date of entry of the judgment or order.

§ 2647. Precedence of cases

The following civil actions in the Court of International Trade shall be given precedence, in the following order, over other civil actions pending before the court, and shall be assigned for hearing at the earliest practicable date and expedited in every way:

(1) *First, a civil action involving the exclusion of perishable merchandise or the redelivery of such merchandise.*

(2) *Second, a civil action for the review of a determination under section 516A (a) (1) (B) (i) or (ii) the Tariff Act of 1930.*

(3) *Third, a civil action commenced under section 515 of the Tariff Act of 1930 involving the exclusion or redelivery of merchandise.*

(4) *Fourth, a civil action commenced under section 516 or 516A of the Tariff Act of 1930, other than a civil action described in paragraph (2) of this section.*

SECTION 308 OF THE ETHICS IN GOVERNMENT ACT

TITLE III—JUDICIAL PERSONNEL FINANCIAL
DISCLOSURE REQUIREMENTS

* * * * *

DEFINITIONS

SEC. 308. For the purposes of this title, the term—

(1) * * *

* * * * *

(9) “judicial officer” means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals; United States district courts, including the district courts in the Canal Zone, Guam, and the Virgin Islands; Court of Claims; Court of [Customs and Patent Appeals] *Appeals for International Trade; Patents, and Trademarks*; [Customs Court] *Court of International Trade*; courts of the District of Columbia and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior; and

SECTION 6001 OF TITLE 18, UNITED STATES CODE

§ 6001. Definitions

As used in this part—

(1) “agency of the United States” means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

(2) “other information” includes any book, paper, document, record, recording, or other material;

(3) “proceeding before an agency of the United States” means any proceeding before such an agency with respect to which it is authorized to issue subpoenas and to take testimony or receive other information from witnesses under oath; and

(4) “court of the United States” means any of the following courts: the Supreme Court of the United States, a United States

court of appeals, a United States district court established under chapter 5, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of [Customs and Patent] Appeals *for International Trade, Patents, and Trademarks*, the Tax Court of the United States, the [Customs Court] *Court of International Trade*, and the Court of Military Appeals.

TARIFF ACT OF 1930

TITLE III—SPECIAL PROVISIONS

Part I—Miscellaneous

* * * * *

SEC. 305. IMMORAL ARTICLES—IMPORTATION PROHIBITED.

(a) PROHIBITION OF IMPORTATION.—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States [Customs]

Court of *International Trade* from the decision of such customs officer. Upon the seizure of such book or matter such customs officer shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

* * * * *

SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—

* * * * *

(c) DETERMINATIONS; REVIEW.—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e) or (f) may appeal such determination to the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks for review in accordance with chapter 7 of title 5, United States Code.* [Such court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court] *Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5, United States Code.*

* * * * *

SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) * * *

(b) REVERSAL OF SECRETARY'S RULINGS.—No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely

to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, or a final decision of the United States [Customs Court] *Court of International Trade*.

* * * * *

SEC. 503. DUTIABLE VALUE.—

Except as provided in section 520(c) (relating to reliquidations on the basis of authorized corrections of errors) or section 562 (relating to withdrawal from manipulating warehouses) of this Act, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty or rates based upon or regulated in any manner by the value of the merchandise, shall be the appraised value determined upon liquidation, in accordance with section 500 or any adjustment thereof made pursuant to section 501 of the Tariff Act: *Provided, however*, That if reliquidation is required pursuant to a final judgment or order of the United States [Customs Court] *Court of International Trade* which includes a reappraisement of imported merchandise, the basis for such assessment shall be the final appraised value determined by such court.

* * * * *

SEC. 514. FINALITY OF DECISIONS: PROTESTS.—

(a) FINALITY OF DECISIONS.—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations), section 516 (relating to petitions by domestic interested parties as defined in section 771(9)(C), (D), and (E) of this Act), section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud of this Act, decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

- (1) the appraised value of merchandise;
- (2) the classification and rate and amount of duties chargeable;
- (3) all charges or exactions of whatever character within the jurisdiction of the Secretary of the Treasury;

[(4) the exclusion of merchandise from entry or delivery under any provision of the customs laws;]

(4) *the exclusion of merchandise from entry or delivery or a demand for redelivery to customs custody under any provision of the customs laws, except a determination appealable under section 337 of this Act;*

(5) the liquidation or reliquidation of an entry, or any modification thereof;

(6) the refusal to pay a claim for drawback; and

(7) the refusal to reliquidate an entry under section 520(c) of this Act,

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States [Customs Court] *Court of International Trade* in accordance with [section 2632 of title 28 of the United States Code within the time prescribed by section 2631] *chapter 169 of title 28 of the United States Code within*

the time prescribed by section 2636 of that title. When a judgment or order of the United States **Customs Court** *Court of International Trade* has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.

(b) With respect to determinations made under section 303 of this Act or title VII of this Act which are reviewable under section 516A of this title, determinations of the appropriate customs officer are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States **Customs Court** *Court of International Trade*.

* * * * *

SEC. 515. REVIEW OF PROTESTS.—

(a) * * *

(b) **REQUEST FOR ACCELERATED DISPOSITION OF PROTEST.**—A request for accelerated disposition of a protest filed in accordance with section 514 of this Act may be mailed by certified or registered mail to the appropriate customs officer any time after ninety days following the filing of such protest. For purposes of section **[1582]** *1581* of title 28 of the United States Code, a protest which has not been allowed or denied in whole or in part within thirty days following the date of mailing by certified or registered mail of a request for accelerated disposition shall be deemed denied on the thirtieth day following mailing of such request.

SEC. 516. PETITIONS BY DOMESTIC INTERESTED PARTIES.

(a) **REQUEST FOR CLASSIFICATION AND RATE OF DUTY; PETITION.**—

(1) The Secretary shall, upon written request by an interested party **[(as defined in section 771(9) (C), (D), and (E) of this Act)]** furnish the classification and the rate of duty imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by such interested party. If the interested party believes that the appraised value, the classification, or rate of duty is not correct, it may file a petition with the Secretary setting forth—

[(1)] (A) a description of the merchandise,

[(2)] (B) the appraised value, the classification, or the rate of duty that it believes proper, and

[(3)] (C) the reasons for its belief.

(2) *As used in this section, the term “interested party” means a person who is—*

(A) *a manufacturer, producer, or wholesaler in the United States;*

(B) *a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States; or*

(C) *a trade or business association a majority of whose members are manufacturers, producers, or wholesalers in the United States,*

of goods of the same class or kind as the designated imported merchandise. Such notice shall include a statement of the reasons for

the denial, as well as a statement informing the protesting party of his right to file a civil action contesting the denial of a protest under section 514 of the Tariff Act of 1930.

* * * * *

(d) Notwithstanding the filing of an action pursuant to [section 2632] *chapter 169* of title 28 of the United States Code, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States [Customs Court] *Court of International Trade* or of the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

(e) The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States [Customs Court] *Court of International Trade*.

(f) If the cause of action is sustained in whole or in part by a decision of the United States [Customs Court] *Court of International Trade* or of the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

* * * * *

SEC. 516A. JUDICIAL REVIEW IN COUNTERVAILING DUTY AND ANTI-DUMPING DUTY PROCEEDINGS.

(a) REVIEW OF DETERMINATION.—

[(1) REVIEW OF CERTAIN DETERMINATIONS.—Within 30 days after the date of publication in the Federal Register of notice of—

[(A) a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,

[(B) a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated,

[(C) a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances,

[(D) a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

[(E) a negative determination by the administering authority under section 703(b) or 733(b) of this Act, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Customs Court by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.]

(1) *REVIEW OF CERTAIN DETERMINATIONS.*—

(A) *THIRTY-DAY REVIEW.*—*Within 30 days after the date of publication in the Federal Register of notice of—*

(i) *a determination by the Secretary or the administering authority, under section 303(a)(3), 702(c), or 732(c) of this Act, not to initiate an investigation,*

(ii) *a determination by the administering authority or the Commission, under section 751(b) of this Act, not to review an agreement or a determination based upon changed circumstances, or*

(iii) *a negative determination by the Commission, under section 703(a) or 733(a) of this Act, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,*

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) *TEN-DAY REVIEW.*—*Within 10 days after the date of publication in the Federal Register of notice of—*

(i) *a determination by the administering authority, under section 703(c) or 733(c) of this Act, that a case is extraordinarily complicated, or*

(ii) *a negative determination by the administering authority under section 703(b) or 733(b) of this Act, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.*

(2) *REVIEW OF DETERMINATION ON RECORD.*—

(A) *IN GENERAL.*—*Within thirty days after the date of publication in the Federal Register of—*

(i) *notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or*

(ii) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B),
 an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States **【Customs Court】** *Court of International Trade* by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) REVIEWABLE DETERMINATIONS.—The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the Secretary and by the Commission under section 303, or by the administering authority and by the Commission under section 705 or 735 of this Act.

(ii) A final negative determination by the Secretary, the administering authority, or the Commission under section 303, 705, or 735 of this Act.

(iii) A determination, other than a determination reviewable under paragraph (1), by the Secretary, the administering authority, or the Commission under section 751 of this Act.

(iv) A determination by the administering authority, under section 704 or 734 of this Act, to suspend an antidumping duty or a countervailing duty investigation.

(v) An injurious effect determination by the Commission under section 704(h) or 734(h) of this Act.

(3) PROCEDURES AND FEES.—The procedures and fees set forth in subsections (b), (c), and (e) of **【section 2632】** *chapter 169* of title 28, United States Code, apply to an action under this section.

* * * * *

(c) LIQUIDATION OF ENTRIES.—

(1) LIQUIDATION IN ACCORDANCE WITH DETERMINATION.— Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by the determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States **【Customs Court】** *Court of International Trade*, or of the United States Court of **【Customs and Patent Appeals】** *Appeals for International Trade, Patents, and Trademarks*, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) **INJUNCTIVE RELIEF.**—In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States **[Customs Court]** *Court of International Trade* may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper showing that the requested relief should be granted under the circumstances. **[In ruling on a request for such injunctive relief, the court shall consider, among other factors, whether—**

[(A) the party filing the action is likely to prevail on the merits,

[(B) the party filing the action would be irreparably harmed if liquidation of some or all of the entries is not enjoined,

[(C) the public interest would best be served if liquidation is enjoined, and

[(D) the harm to the party filing the action would be greater if liquidation of some or all of the entries is not enjoined than the harm to other persons if liquidation of some or all of the entries is enjoined.]

(3) **REMAND FOR FINAL DISPOSITION.**—If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) **STANDING.**—Any interested party who was a party to the proceedings under section 303 of this Act or title VII of this Act shall have the right to appear and be heard as a party in interest before the United States **[Customs Court]** *Court of International Trade*. The party filing the action shall notify all **[interested parties of the filing of an action pursuant to this section]** *such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.*

(e) **LIQUIDATION IN ACCORDANCE WITH FINAL DECISION.**—If the cause of action is sustained in whole or in part by a decision of the United States **[Customs Court]** *Court of International Trade* or of the United States Court of **[Customs and Patent Appeals]** *Appeals for International Trade, Patents, and Trademarks—*

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c) (2), shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

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SEC. 528. TAXES NOT TO BE CONSTRUED AS DUTIES.

No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. Nothing in this section shall be construed to limit or restrict the jurisdiction of the United States [Customs Court] *Court of International Trade* or the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*.

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) PROHIBITION.— * * *

* * * * *

[(e) DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of this Act for the recovery of any monetary penalty claimed under this section—]

(e) *COURT OF INTERNATIONAL TRADE PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—*

(1) all issues, including the amount of the penalty, shall be tried de novo;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission consisting of the violation, and the alleged violation shall have the burden of proof that the act or omission did not occur as a result of negligence.

* * * * *

SEC. 604. SAME—PROSECUTION.

It shall be the duty of [every United States district attorney] *the Attorney General of the United States* immediately to inquire into the facts of cases reported to him by customs officers and the laws applicable thereto, and if it appears probable that any fine, penalty, or forfeiture has been incurred by reason of such violation, for the recovery of which the institution of proceedings in the United States district court *or the Court of International Trade* is necessary, forthwith to cause the proper proceedings to be commenced and prosecuted, without delay, for the recovery of such fine, penalty, or forfeiture in such case provided, unless, upon inquiry and examination, [such district attorney] *the Attorney General* decides that such proceedings

can not probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case he shall report the facts to the Secretary of the Treasury for his direction in the premises.

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Part VI—Miscellaneous Provisions

SEC. 641. CUSTOMHOUSE BROKERS.

(a) * * *

(b) REVOCATION OR SUSPENSION.—The appropriate officer of the customs may at any time, for good and sufficient reasons, serve notice in writing upon any customhouse broker so licensed to show cause why said license shall not be revoked or suspended, which notice shall be in the form of a statement specifically setting forth the ground of complaint. The appropriate officer of customs shall within ten days thereafter notify the customhouse broker in writing of a hearing to be held before him within five days upon said charges. At such hearing the customhouse broker may be represented by counsel, and all proceedings including the proof of the charges and the answer thereto, shall be presented, with the right of cross-examination to both parties, and a stenographic record of the same shall be made and a copy thereof shall be delivered to the customhouse broker. At the conclusion of such hearing the appropriate officer of customs shall forthwith transmit all papers and the stenographic report of the hearing, which shall constitute the record of the case, to the Secretary of the Treasury for his action. Thereupon the said Secretary of the Treasury shall have the right to revoke or suspend the license of any customhouse broker shown to be incompetent, disreputable, or who has refused to comply with the rules and regulations issued under this section, or who has, with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client, or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement.

An appeal may be taken by any licensed customhouse broker from any order of the Secretary of the Treasury suspending or revoking a license. Such appeal shall be taken by filing, [in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia,] *in the Court of International Trade*, within sixty days after the entry of such order, a written petition praying that the order of the Secretary of the Treasury be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of the Treasury, or any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Secretary of the Treasury shall be considered by the court unless such objection shall have

been urged before the appropriate officer of customs or unless there were reasonable grounds for failure so to do. The finding of the Secretary of the Treasury as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the appropriate officer of customs, the court may order such additional evidence to be taken before the appropriate officer of customs and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary of the Treasury may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. [The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary of the Treasury shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).] The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the Secretary of the Treasury's order.

SECTION 7443 OF THE INTERNAL REVENUE CODE OF 1954

Subtitle F—Procedure and Administration

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CHAPTER 76—JUDICIAL PROCEEDINGS

* * * * *

Subchapter C—The Tax Court

* * * * *

PART I—ORGANIZATION AND JURISDICTION

* * * * *

SEC. 7443. MEMBERSHIP.

(a) **NUMBER.**— * * *

* * * * *

(d) **EXPENSES FOR TRAVEL AND SUBSISTENCE.**—Judges of the Tax Court shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States [Customs] Court of *International Trade*.

* * * * *

SECTION 906 OF TITLE 44, UNITED STATES CODE

§ 906. Congressional Record: gratuitous copies; delivery; subscriptions

The Public Printer shall furnish the Congressional Record only as follows:

of the bound edition—

to the Senate Service Department five copies for the Vice President and each Senator;

to the Secretary and Sergeant at Arms of the Senate, each, two copies;

to the Joint Committee on Printing not to exceed one hundred copies;

to the House of Representatives Publications Distribution Service, three copies for each Representative and Resident Commissioner in Congress; and

to the Clerk, Sergeant at Arms and Doorkeeper of the House of Representatives, each, two copies;

of the daily edition—

to the Vice President, one hundred copies;

to each Senator, fifty copies (which may be transferred only to public agencies and institutions);

to the Secretary and Sergeant at Arms of the Senate, each, twenty-five copies;

to the Secretary, for official use, not to exceed thirty-five copies; and

to the Sergeant at Arms for use on the floor of the Senate, not to exceed fifty copies;

to each Member of the House of Representatives, the Resident Commissioner from Puerto Rico, the Delegate from the District of Columbia, the Delegate from Guam, and the Delegate from the Virgin Islands, thirty-four copies (which may be transferred only to public agencies and institutions);

to the Clerk, Sergeant at Arms, and Doorkeeper of the House of Representatives, each, twenty-five copies;

to the Clerk, for official use, not to exceed fifty copies, and to the Doorkeeper for use on the floor of the House of Representatives, not to exceed seventy-five copies;

to the Vice President and each Senator, Representative, and Resident Commissioner in Congress (and not transferable) three copies of which one shall be delivered at his residence, one at his office, and one at the Capitol.

In addition to the foregoing the Congressional Record shall also be furnished as follows:

In unstitched form, and held in reserve by the Public Printer, as many copies of the daily Record as may be required to supply a semimonthly edition, bound in paper cover together with each semimonthly index when it is issued, and then be delivered promptly as follows:

to each committee and commission of Congress, one daily and one semimonthly copy;

to each joint committee and joint commission in Congress, as may be designated by the Joint Committee on Printing, two copies of the daily, one semimonthly copy, and one bound copy;

to the Secretary and the Sergeant at Arms of the Senate, for office use, each, six semimonthly copies;

to the Clerk, Sergeant at Arms, and Doorkeeper of the House, for office use, each, six semimonthly copies;

to the Joint Committee on Printing, ten semimonthly copies;

to the Vice President and each Senator, Representative, and Resident Commissioner in Congress, one semimonthly copy;

to the President of the United States, for the use of the Executive Office, ten copies of the daily, two semimonthly copies, and one bound copy;

to the Chief Justice of the United States and each of the Associate Justices of the Supreme Court of the United States, one copy of the daily;

to the offices of the marshal and clerk of the Supreme Court of the United States, each, two copies of the daily and one semimonthly copy;

to each United States circuit and district judge, and to the chief judge and each associate judge of the United States Court of Claims, the United States Court of **Customs and Patent** Appeals for *International Trade, Patents, and Trademarks*, the United States **Customs Court** *Court of International Trade*, the Tax Court of the United States, and the United States Court of Military Appeals, upon request to a member of Congress and notification by the Member to the Public Printer, one copy of the daily, in addition to those authorized to be furnished to Members of Congress under the preceding provisions of this section;

to the offices of the Vice President and the Speaker of the House of Representatives, each, six copies of the daily and one semimonthly copy;

to the Sergeant at Arms, the Chaplain, the Postmaster, the superintendent and the foreman of the Senate Service Department and of the House of Representatives Publications Distribution Service, respectively; to the Secretaries to the Majority and the Minority of the Senate, and to the Doorkeeper of the House of Representatives, each, one copy of the daily;

to the office of the Parliamentarian of the House of Representatives, six copies of the daily, one semimonthly copy, and two bound copies;

to the offices of the Official Reporters of Debates of the Senate and House of Representatives, respectively, each, fifteen copies of the daily, one semimonthly copy, and three bound copies;

to the office of the stenographers to committees of the House of Representatives, four copies of the daily and one semimonthly copy;

to the office of the Congressional Record Index, ten copies of the daily and two semimonthly copies;

to the offices of the superintendent of the Senate and House document rooms, each, three copies of the daily, one semimonthly copy, and one bound copy;

to the offices of the superintendents of the Senate and House press galleries, each, two copies of the daily, one semimonthly copy, and one bound copy;

to the offices of the Legislative Counsel of the Senate and House of Representatives, respectively, and the Architect of the Capitol, each, three copies of the daily, one semimonthly copy, and one bound copy;

to the Library of Congress for official use in Washington, District of Columbia, and for international exchange, as provided by sections 1718 and 1719 of this title, not to exceed one hundred and forty-five copies of the daily, five semimonthly copies, and one hundred and fifty bound copies;

to the library of the Senate, three copies of the daily, two semimonthly copies, and not to exceed fifteen bound copies;

to the library of the House of Representatives, five copies of the daily, two semimonthly copies, and not to exceed twenty-eight bound copies, of which eight copies may be bound in the style and manner approved by the Joint Committee on Printing;

to the library of the Supreme Court of the United States, two copies of the daily, two semimonthly copies, and not to exceed five bound copies;

to the library of each United States Court of Appeals, each United States District Court, the United States Court of Claims, the United States Court of **Customs and Patent** Appeals *for International Trade, Patents, and Trademarks*, the United States **Customs** Court of *International Trade*, the Tax Court of the United States, and the United States Court of Military Appeals, upon request to the Public Printer, one copy of the daily, one semimonthly copy, and one bound copy;

to the Public Printer for official use, not to exceed seventy-five copies of the daily, ten semimonthly copies, and two bound copies;

to the Director of the Botanic Garden, two copies of the daily and one semimonthly copy;

to the Archivist of the United States, five copies of the daily, two semimonthly copies, and two bound copies;

to the library of each executive department, independent office, and establishment of the Government in the District of Columbia, except those designated as depository libraries, and to the libraries of the municipal government of the District of Columbia, the Naval Observatory, and the Smithsonian Institution, each, two copies of the daily, one semimonthly copy, and one bound copy;

to the offices of the Governors of Puerto Rico, Guam and the Virgin Islands, each, five copies in both daily and bound form;

to the office of the Governor of the Canal Zone, five copies in both daily and bound form;

to each ex-President and ex-Vice President of the United States, one copy of the daily;

to each former Senator, Representative, and Commissioner from Puerto Rico, upon request to the Public Printer, one copy of the daily;

to the Governor of each State, one copy in both daily and bound form;

to the United States Soldiers' Home and to each of the National Homes for Disabled Volunteer Soldiers, and to each of the State soldiers' homes, one copy of the daily;

to the Superintendent of Documents, as many daily and bound copies as may be required for distribution to depository libraries;

to the Department of State, not to exceed one hundred and fifty copies of the daily, for distribution to each United States embassy and legation abroad, and to the principal consular offices in the discretion of the Secretary of State;

to each foreign legation in Washington whose government extends a like courtesy to our embassies and legations abroad, one copy of the daily, to be furnished upon requisition of and sent through the Secretary of State;

to each newspaper correspondent whose name appears in the Congressional Directory, and who makes application, for his personal use and that of the papers he represents, one copy of the daily and one copy of the bound, the same to be sent to the office address of the member of the press or elsewhere as he directs; not to exceed four copies in all may be furnished to members of the same press bureau.

Copies of the daily edition, unless otherwise directed by the Joint Committee on Printing, shall be supplied and delivered promptly on the day after the actual day's proceedings as originally published. Each order for the daily Record shall begin with the current issue, if previous issues of the same session are not available. The apportionment specified for daily copies may not be transferred for the bound form and an allotment of daily copies not used by a Member during a session shall lapse when the session ends.

SECTION 71 OF THE PLANT VARIETY PROTECTION ACT

PLANT VARIETY PROTECTION ACT

AN ACT To encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest.

* * * * *

Chapter 7.—APPEALS TO COURTS AND OTHER REVIEW

Sec. 71. Appeals.

From the decisions made under sections 44, 63, 91, 92, and 128 appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The Court of [Customs and Patent] Appeals for *International Trade, Patents, and Trademarks* and United States Courts of Appeals shall have jurisdiction, with venue in the case of the latter as stated in 28 U.S.C. 2343.

* * * * *

SECTION 21 OF THE TRADEMARK ACT OF 1946

SEC. 21. (a) (1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 8, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of [Customs and Patent] Appeals *for International Trade, Patents, and Trademarks* thereby waiving his right to proceed under section 21(b) hereof: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall, within twenty days after the appellant has filed notice of appeal according to section 21 (a) (2) hereof, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said section 21(b), in default of which the decision appealed from shall govern the further proceedings in the case.

(2) Such an appeal to the United States Court of [Customs and Patent] Appeals *for International Trade, Patents, and Trademarks* shall be taken by filing a notice of appeal with the Commissioner, within sixty days after the date of the decision appealed from or such longer time after said date as the Commissioner appoints. The notice of such appeal shall specify the party or parties taking the appeal, shall designate the decision or part thereof appealed from, and shall state that the appeal is taken to said court.

(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the court with a brief explaining the grounds of the decision of the Patent Office, touching all the points involved in the appeal.

(4) The court shall decide such appeal on the evidence produced before the Patent Office. The court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern further proceedings in the case.

(b) (1) Whenever a person authorized by section 21(a) hereof to appeal to the United States Court of [Customs and Patent] Appeals *for International Trade, Patents, and Trademarks* is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of [Customs and Patent] Appeals *for International Trade, Patents, and Trademarks*, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 21(a). The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case

may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

TITLE 35, UNITED STATES CODE

CHAPTER 13—REVIEW OF PATENT AND TRADEMARK OFFICE DECISIONS

Sec.

141. Appeal to Court of **[Customs and Patent]** *Appeals for International Trade, Patents, and Trademarks.*

142. Notice of appeal.

143. Proceedings on appeal.

144. Decision on appeal.

145. Civil action to obtain patent.

146. Civil action in case of interference.

§ 141. Appeal to Court of **[Customs and Patent] *Appeals for International Trade, Patents, and Trademarks***

An applicant dissatisfied with the decision of the Board of Appeals may appeal to the United States Court of **[Customs and Patent]** *Appeals for International Trade, Patents, and Trademarks*, thereby waiving his right to proceed under section 145 of this title. A party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority may appeal to the United States Court of Customs and Patent Appeals, but such appeal shall

be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.

§ 142. Notice of appeal

When an appeal is taken to the United States Court of [Customs and Patent] *Appeals for International Trade, Patents, and Trademarks*, the appellant shall give notice thereof to the Commissioner and shall file in the Patent and Trademark Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

§ 143. Proceedings on appeal

The United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent and Trademark Office, in writing, touching all the points involved by the reasons of appeal.

§ 144. Decision on appeal

The United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, on petition, shall hear and determine such appeal on the evidence produced before the Patent and Trademark Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent and Trademark Office and govern the further proceedings in the case.

§ 145. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may unless appeal has been taken to the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The court may adjudge that such applicant is entitled to receive a patent for his invention, as specified in any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

§ 146. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the board of patent interferences on the question of priority, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 141 of this title, unless he has appealed to the United States Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks*, and such appeal is pending or has been decided. In such suits the record in the Patent and Trademark Office shall be admitted on motion of either party upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of the parties to take further testimony. The testimony and exhibits of the record in the Patent and Trademark Office when admitted shall have the same effect as if originally taken and produced in the suit.

Such suit may be instituted against the party in interest as shown by the records of the Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same state, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but he shall be notified of the filing of the suit by the clerk of the court in which it is filed and shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the filing in the Patent and Trademark Office of a certified copy of the judgment and on compliance with the requirements of law.

SECTION 152 OF THE ATOMIC ENERGY ACT OF 1954

CHAPTER 13. PATENTS AND INVENTIONS

* * * * *

SEC. 152. INVENTIONS MADE OR CONCEIVED DURING COMMISSION CONTRACTS.—Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of, the Commission, except that the Commission may waive its claim to any such invention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy,

shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Commissioner of Patents (unless the Commission advises the Commissioner of Patents that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Commissioner of Patents shall as soon as the application is otherwise in condition for allowance forward copies of the application and the statement to the Commission.

The Commissioner of Patents may proceed with the application and issue the patent to the applicant (if the invention or discovery is otherwise patentable) unless the Commission, within 90 days after receipt of copies of the application and statement, directs the Commissioner of Patents to issue the patent to the Commission (if the invention or discovery is otherwise patentable) to be held by the Commission as the agent of and on behalf of the United States.

If the Commission files such a direction with the Commissioner of Patents, and if the applicant's statement claims, and the applicant still believes, that the invention or discovery was not made or conceived in the course of or under any contract, subcontract or arrangement entered into with or for the benefit of the Commission entitling the Commission to the title to the application or the patent the applicant may, within 30 days after notification of the filing of such a direction, request a hearing before a Board of Patent Interferences. The Board shall have the power to hear and determine whether the Commission was entitled to the direction filed with the Commissioner of Patents. The Board shall follow the rules and procedures established for interference cases and an appeal may be taken by either the applicant or the Commission from the final order of the Board to the Court of [Customs and Patent Appeals] *Appeals for International Trade, Patents, and Trademarks* in accordance with the procedures governing the appeals from the Board of Patent Interferences.

If the statement filed by the applicant should thereafter be found to contain false material statements any notification by the Commission that it has no objections to the issuance of a patent to the applicant shall not be deemed in any respect to constitute a waiver of the provisions of this section or of any applicable civil or criminal statute, and the Commission may have the title to the patent transferred to the Commission on the records of the Commissioner of Patents in accordance with the provisions of this section. A determination of rights by the Commission pursuant to a contractual provision or other arrangement prior to the request of the Commissioner of Patents for the statement, shall be final in the absence of false material statements or non-disclosure of material facts by the applicant.

SECTION 305 OF THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958

PROPERTY RIGHTS IN INVENTIONS

SEC. 305. (a) * * *

* * * * *

(d) Upon any application as to which any such statement has been transmitted to the Administrator, the Commissioner may, if the invention is patentable, issue a patent to the applicant unless the Administrator, within ninety days after receipt of such application and statement, requests that such patent be issued to him on behalf of the United States. If, within such time, the Administrator files such a request with the Commissioner, the Commissioner shall transmit notice thereof to the applicant, and shall issue such patent to the Administrator unless the applicant within thirty days after receipt of such notice requests a hearing before a Board of Patent Interferences on the question whether the Administrator is entitled under this section to receive such patent. The Board may hear and determine, in accordance with rules and procedures established for interference cases, the question so presented, and its determination shall be subject to appeal by the applicant or by the Administrator to the Court of [Customs and Patent] Appeals *for International Trade, Patents, and Trademarks* in accordance with procedures governing appeals from decisions of the Board of Patent Interferences in other proceedings.

THE FIRST SECTION OF THE ACT OF MAY 28, 1926

AN ACT To provide the name by which the Board of General Appraisers and members thereof shall hereafter be known.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That the Board of General Appraisers shall hereafter be known as the United States Customs Court and the members thereof shall hereafter be known as the judges of the United States Customs Court.]

TRADE ACT OF 1974

TABLE OF CONTENTS

TITLE I—NEGOTIATING AND OTHER AUTHORITY

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TITLE II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

CHAPTER 1—IMPORT RELIEF

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PART III—JOB SEARCH AND RELOCATION ALLOWANCES

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Subchapter C—General Provisions

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[SEC. 250. JUDICIAL REVIEW.]

[(a) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group, aggrieved by a final determination by the Secretary under the provisions of section 223 may, within 60 days after notice of such determination, file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The clerk of such court shall send of copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.]

[(b) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remain the case to the Secretary to take further evidence,

and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.】

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CHAPTER 5—MISCELLANEOUS PROVISIONS

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SEC. 284. JUDICIAL REVIEW.

(a) *A worker, group of workers, certified or recognized union, or authorized representative of such worker or group aggrieved by a final determination of the Secretary of Labor under section 223 of this title, a firm or its representative aggrieved by a final determination of the Secretary of Commerce under section 251 of this title, a community aggrieved by a final determination of the Secretary of Commerce under section 271 of this title, or any other interested domestic party aggrieved by any such final determination may, within 60 days after notice of such determination, commence a civil action in the United States Court of International Trade for review of such determination. The clerk of such court shall send a copy of the summons and the complaint in such action to the Secretary of Labor or the Secretary of Commerce, as the case may be. Upon receiving a copy of such summons and complaint, such Secretary shall promptly certify and file in such court the record on which he based such determination.*

(b) *The findings of fact by the Secretary of Labor or the Secretary of Commerce, as the case may be, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to such Secretary to take further evidence, and such Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.*

(c) *The Court of International Trade shall have jurisdiction to affirm the action of the Secretary of Labor or the Secretary of Commerce, as the case may be, or to set such action aside, in whole or in part. The judgment of the Court of International Trade shall be subject to review by the United States Court of Appeals for International Trade, Patents, and Trademarks as prescribed by the rules of such court. The judgment of the Court of Appeals for International Trade, Patents, and Trademarks shall be subject to review by the Supreme Court of the United States upon certiorari as provided in section 1256 of title 28.*

SEC. [284.] 285. EFFECTIVE DATE.

Chapters 2, 3, and 4 of this title shall become effective on the 90th day following the date of enactment of this Act and shall terminate on September 30, 1982.

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ADDITIONAL VIEWS OF MESSRS. McCLORY, RAILSBACK,
HYDE, AND SENSENBRENNER

The Customs Court has had a political diversity requirement for its membership throughout its entire history, and there is no need or sound justification, constitutional or otherwise, for making a change at this time. On the contrary, there are compelling equitable and practical reasons to continue to provide that no more than five of the nine judges on the court can be members of the same political party.

Rather than politicize the process of selecting judges for the Customs Court, as has been alleged, the political diversity requirement seeks to balance that process. It goes without saying that political considerations have always played a significant role in the selection of judicial nominees—and will doubtless play a part in the President's selection of the chief judge of the Customs Court, as authorized by this bill. It is customary for Presidents to look to their own political party for judicial nominees. What a political diversity requirement does, however, is to ameliorate partisan considerations by requiring a President on occasion to look outside his party for qualified candidates. As a result, over time a far larger and more diverse pool of talent would be drawn upon in making nominations. Thus the real question for each Member to decide is whether five or nine of the judgeships on the Customs Court should be available to a President to grant as partisan political favors to members of his own party. We think five is enough.

Another important factor is that the Customs Court inevitably makes international economic policy, which may have an impact on all of our citizens. This is particularly so in its judicial review of agency determinations relating to antidumping and countervailing duty cases. In this context, politically balanced membership would be both healthier and more appropriate for the American body politic.

In sum, political diversity on the Customs Court is strongly warranted by both fairness and practicality. We expect that the House will shortly have an opportunity to take a stand on this issue.

ROBERT McCLORY.

TOM RAILSBACK.

HENRY J. HYDE.

JAMES SENSENBRENNER, Jr.